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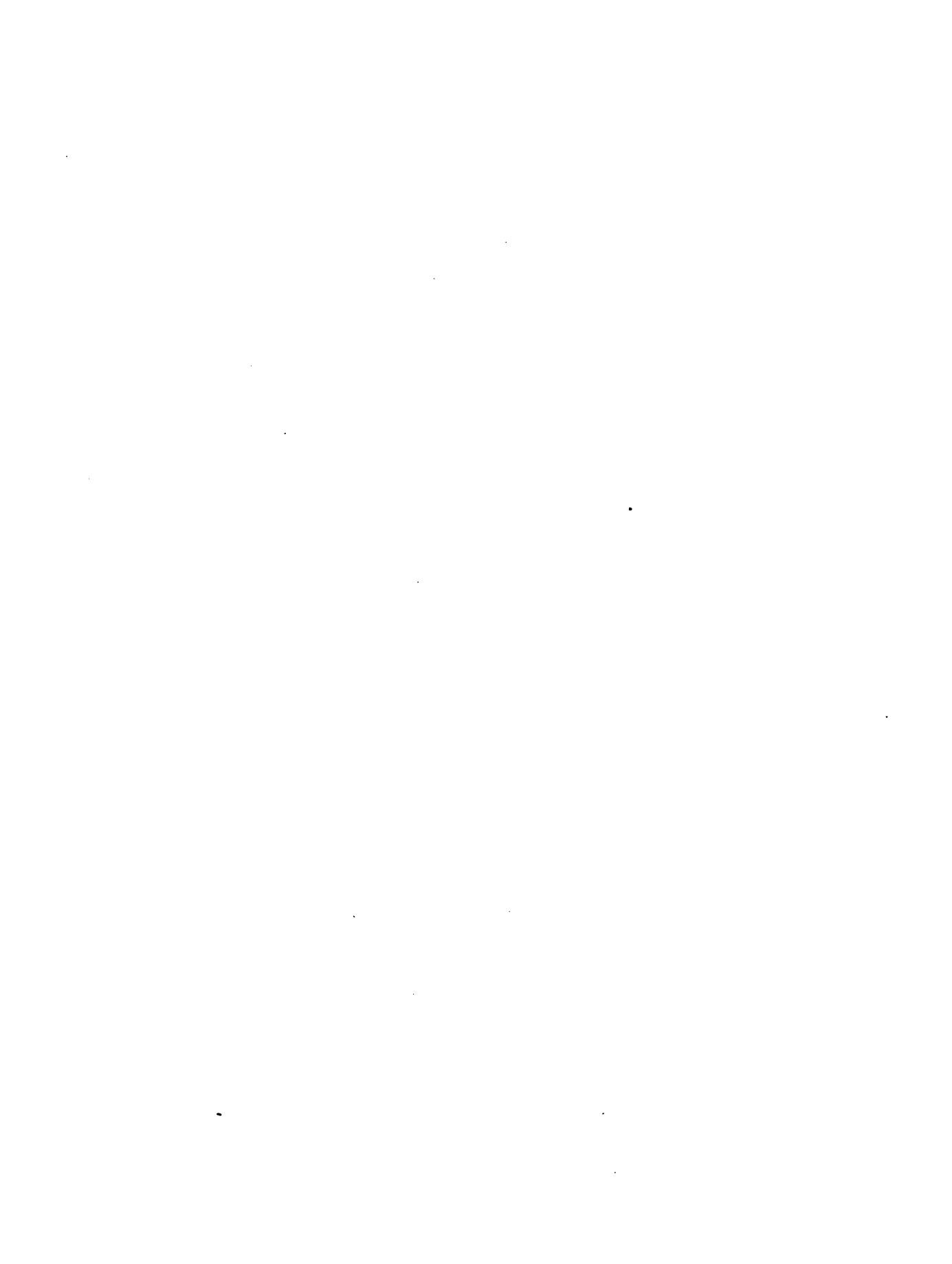








A LOST CHAPTER  
IN THE  
HISTORY OF MARY QUEEN OF SCOTS  
RECOVERED







ANNE HUISSON  
Wife of Sir Thomas More  
and Mother of Sir Thomas More

A LOST CHAPTER  
IN THE  
HISTORY OF MARY QUEEN OF SCOTS  
RECOVERED:

NOTICES OF JAMES, EARL OF BOTHWELL, AND  
LADY JANE GORDON, AND OF  
THE DISPENSATION FOR THEIR MARRIAGE;  
REMARKS ON THE LAW AND PRACTICE OF SCOTLAND  
RELATIVE TO MARRIAGE DISPENSATIONS;

AND

*AN APPENDIX OF DOCUMENTS.*



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## INTRODUCTION.

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A FEW years ago, in the course of an examination of the documents in the charter-room at Dunrobin, for the Historical Manuscripts Commission, I had the good fortune to bring to light the original Dispensation for the marriage of James Earl of Bothwell with Lady Jane Gordon,<sup>1</sup> the mysterious disappearance of which, soon after its date, formed the subject of contemporary question, as it has continued to be a theme of speculation with Scotch historians from that time to our own.

The importance of this document in any attempt to explain the eventful relations between Queen Mary and the Earl of Bothwell is sufficiently obvious, but it seemed to me that a detailed notice would lead to a better appreciation of its unique position in that series of events which connected the fortunes of the Queen with those of her subject.

Having communicated my design to the Duke of Sutherland, his Grace, with the utmost readiness, placed the Dispensation at my disposal, together with any other

<sup>1</sup> Second Report of the Royal Commission on Historical Manuscripts, Appendix, p. 177.

documents at Dunrobin, which might serve to illustrate the subject of its history.<sup>1</sup> He, at the same time, gave me the use of the portrait of Lady Jane Gordon, from which the engraving in the present volume has been prepared.

In the first part of the work will be found a narrative of the circumstances out of which the Dispensation arose, and with which it subsequently came to be mixed up; and as it appeared desirable to elucidate the contemporary law and practice of Scotland on the subject of Marriage Dispensations, I have added some remarks on these in a concluding chapter.

JOHN STUART.

<sup>1</sup> In availing myself of the Duke's courtesy, I have been greatly aided by the Rev. James M. Joass, minister of Golspie, who examined the papers for me, and selected such as seemed likely to be of use.

## NARRATIVE OF EVENTS.

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### I. THE EARL OF BOTHWELL AND HIS MARRIAGE TO LADY JANE GORDON.

JAMES, fourth Earl of Bothwell, was born about the year 1535, and succeeded his father in the year 1556. At an early period of his life he gave evidence of his turbulent and restless disposition ; while in politics he adhered to the party of the Queen Regent, which rendered him obnoxious to those who relied on English influence. At the time of Queen Mary's accession to the throne, Bothwell was in France, having been despatched thither by the Queen Regent to solicit aid for her side. After Mary's arrival in Scotland in the month of August 1561, Bothwell was appointed a member of her Privy Council, but he was at the same time at feud with several powerful nobles, and especially with the Earl of Arran and the Queen's brother the Earl of Murray.

He was imprisoned in the castle of Edinburgh for a time in the autumn of 1562, on a charge of treason brought against him by the Earl of Arran. From this he contrived to make his escape, but only to fall into the hands of the English Queen, by whom he was detained a prisoner in London for more than a year. At the end of that time he was permitted to go abroad, his residence

being again in France ; whence he returned to Scotland in the spring of 1565. If we may credit a statement made at this time by Randolph to Cecil, he had rendered himself obnoxious to the Queen :—‘ Bothwell hath grievously offended the Queen of Scots ‘ by words spoken against the English Queen, and also against ‘ herself.’<sup>1</sup> He was cited to abide his trial for misdemeanours at a Justice Court in Edinburgh in May 1565, but being unwilling to trust himself in the power of the Earl of Argyll, the Justiciary, who, in company with his enemy the Earl of Murray, came to hold the Court at the head of five thousand retainers, he again made his escape, and went abroad.

After a few months, however, he was allowed to return to Scotland, and on the 5th of August 1565 he received the Royal remission for breaking ward out of the castle of Edinburgh without license.

The Queen’s marriage with Darnley led to fresh political combinations among the nobles. Murray and those in the English party were in disgrace ; while, on the other hand, the Queen found it necessary to strengthen her position by a closer alliance with those who were on the other side.

Of these Bothwell, by his vast possessions, and through the offices which he held, was one of the most prominent, and in a short time we find him and the Earl of Huntly associated as active leaders on the Royal side. Writing to Cecil on the 8th of October

<sup>1</sup> Thorpe’s Calendar of State Papers (Scotland), p. 207. Chalmers’ Life of Queen Mary, vol. ii. p. 215.

1565, Randolph states, 'This day the Queen hath marched to Dumfries : Huntly and Bothwell are the new Counsellors.'<sup>1</sup>

These noblemen aided the Queen on her escape to Dunbar after the murder of Rizzio, and Bothwell then obtained from her a grant of the important office of Keeper of Dunbar Castle.

He was at this time employed as a commissioner for settling disputes on the Borders, being Lieutenant of the Marches with England ; and a letter from Randolph to Cecil in the same month of October contains the sarcastic remark, 'My Lord Bothwell, for his great virtue, doth now all next to the Earl of Athole.'<sup>2</sup>

A few months later Randolph writes, 'I told the Scotish Queen that Bothwell was a person hated by the English Queen, and known not to incline to peace, so that if bad consequences followed she had herself only to blame. She answered that she could also make exceptions against Bedford, and so would not name another person in the place of Bothwell.' The opinion held of Bothwell by the Earl of Bedford was far from flattering. On the 6th of April 1565 he had written to Cecil, 'I assure you Bothwell is as naughty a man as liveth, and much given to the most detestable vices ;' and on the 8th of the following February he says 'that he despairs of justice on the Borders while Bothwell is Warden, who neither fears God nor loves justice.'<sup>3</sup>

At this period of his life the Earl of Bothwell was engaged

<sup>1</sup> Thorpe, *ut sup.*, p. 222. Chalmers, p. 216.

<sup>2</sup> Chalmers, *ut sup.*, p. 217. Thorpe's Calendar, p. 223.

<sup>3</sup> Chalmers, pp. 217, 218.

in marriage with Lady Jane Gordon, daughter of George, fourth Earl of Huntly, and then in her twentieth year.

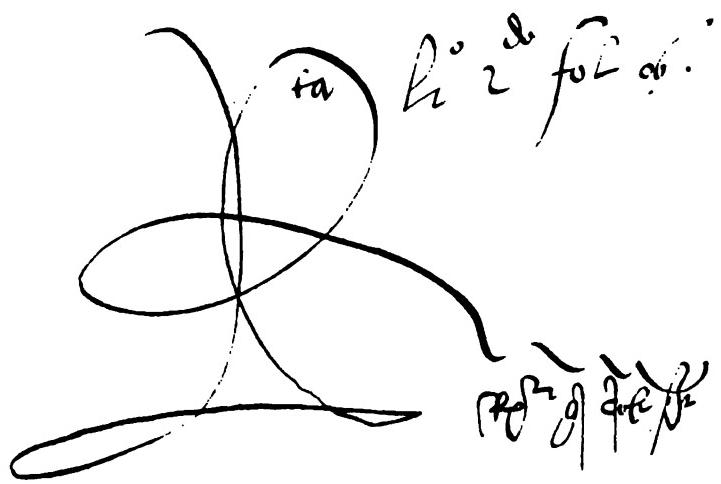
It may be thought, indeed, that he was destitute of most of the gifts which would have attracted the affections of a youthful and accomplished lady.

He was claimed by a Danish wife—he had been ‘quietly married or hand fast’ to Janet Betoun of Cranstoun Riddell,<sup>1</sup> and his character for profligacy was notorious. His personal appearance is represented as having been ungainly; and while his numerous outbreaks and deeds of violence had made him obnoxious in many quarters, and more than once driven him into exile, he had by his profuse habits become embarrassed in his circumstances, and had burdened his lands with heavy debts.

It is probable, however, that the marriage may be traced to the political associations which for a time so closely united Bothwell with the lady’s brother and guardian, rather than to the mutual affection of the parties.

It was not indeed the first time that an alliance had been formed between the houses of Gordon and Hepburn, since Patrick, first Earl of Bothwell, took for his second wife Margaret, the daughter of

<sup>1</sup> This lady (the heroine of the ‘Lay of the Last Minstrel’), was married to Simon Prestoun, younger of Craigmillar, and was divorced from him; after which she married Walter Scott of Buccleuch. Mr. Riddell, who quotes from the record as to the handfasting of the Earl with Janet Beaton, adds, ‘It is remarkable that the lady was elsewhere known as the *chere amie* of the former, and is charged with administering philtres for riveting the infatuated affection of Mary to him, which indeed is not easily explained.’ (Peerage and Consistorial Law, vol. i. p. 428, note.)



DEANES miseratione dina  
Blaugorey dux abbas et ex  
dux Jacob comiti de Botghin  
Tunc gaudem forzi gressus  
in diu Sedit agit se pone  
Exa benignitate indulget quic  
pro paro Cofra opposito son  
firmodaliter celeritati tis quia si  
dimicet non potestis defens  
fauultatis et offens Lyam ap  
vix in hac paro supplicatione  
fibis matimod libere extrage  
aphor nobis transpa et quia fe  
unda per suspicendas ligatus  
anno mactavas annis duci  
adu septimo

Ex forsi datarii  
M. 1888. m. 0

George, second Earl of Huntly,<sup>1</sup> and the union thus formed was the root from which there resulted a relationship between their descendants rendering their marriage incompatible under the canon law.

To obviate the objection of consanguinity a dispensation became necessary, and the groundwork of such license was legal proof that the parties really were related within the forbidden degrees, which in their case was alleged to be the fourth degree in both lines.

The facts which were established to prove that Bothwell and Lady Jane Gordon were so related are set forth in an Instrument printed by Mr. William Tytler from the original manuscript among the papers at Hamilton Palace,<sup>2</sup> which I have reprinted in the Appendix of Documents (No. I.)

The dispensation which followed is dated 17th February 1566, and was granted by John, Archbishop of St. Andrews, Legate, and with the authority of Legate *a latere* of the Holy See. The original, which is in the Charter Room at Dunrobin, is represented in facsimile in the accompanying plate, and is also printed in the Appendix of Documents (No. III.) It is in the ordinary style of such Instruments, and after narrating their connection in double fourth degrees of consanguinity, grants liberty to the parties to be married to each other, notwithstanding of that impediment.

As part of the marriage arrangements, a contract, dated 9th February 1566, was entered into between the Earl of Bothwell on the one part, and George, Earl of Huntly, Dame Agnes Keith, Countess

<sup>1</sup> See *post*, p. 73.

<sup>2</sup> An Inquiry, Historical and Critical, into the Evidence against Mary Queen of Scots, Appendix No. II., third edition, Edinb. 1772.

of Huntly, his mother, and Jane Gordon his sister, ‘with aduis and ‘ expres connsale of our souerane lady Marie, Quene of Scotland, on the other part.’<sup>1</sup> By it the Earl of Bothwell agreed to complete his marriage with the said Jane Gordon before the 1st of March ensuing, and in the meantime to infect her in liferent ‘be plane alienatioun and ‘ venditioun for soumes of money to be mentionat thairintill be charter ‘ and precept of sasing,’ in the lands of the Mains of Crichton and others; but as these lands were in the possession of various heritable creditors, it was agreed that eleven thousand merks of Lady Jane’s dowry should be employed in redeeming the portions of the lands thus burdened, and on this being done the whole lands were to be resigned into the Queen’s hands for a fresh title in favour of the Earl and his wife, and the survivor of them, in conjunct infection, and their heirs, whom failing, in favour of the heirs and assignees of the Earl himself.

The contract, at which the first signature is that of the Queen, is printed in the Appendix of Documents (No. IV.)<sup>2</sup>

<sup>1</sup> Both the Queen and her husband, Henry Darnley, were in like manner parties and subscribers to the contract of marriage between Mary Bethune, one of the Queen’s Marys, and Alexander Ogilvie of Boyne, which is dated 3d May 1566; they undertaking to cause George, Earl of Huntly, James, Earl of Bothwell, and others to become cautioners for the said Alexander Ogilvie. (Miscell. Maitl. Club, vol. i. p. 43.) The Queen was also a party to the marriage-contract of Mary Livingston (another of her Marys) with John, son of Lord Sempill, dated 3d March 1565. She names the marriage day, and gives a dowry of £500 a year in land. Besides other gifts, the Queen gave the bride her wedding dress and furnished the bridal masque. (Robertson’s Inventories of Mary Queen of Scots, p. xlviij. note.)

<sup>2</sup> The Earl of Bothwell a few months later granted to his wife a liferent

The marriage was solemnised on the 22d of February, and the proceedings connected with it are described by Pitscottie in the following terms:—‘ Vpoun the 22d day of Februar the ‘ earle of Bothwall was married vpoun the earle of Huntlies ‘ sister. The king and queine maid the banqueitt the first day, ‘ quhilk continewed fyve dayes with justing and tournamentis, ‘ and thair was maid six knyghtis of Fye at that tyme.’<sup>1</sup>

The Queen's great interest in Lady Jane appears not only from her joining in the contract, but in the gift which she made to her of a wedding dress of cloth of silver, lined with taffeta, which is thus described in the Royal Inventory:—‘ Plus xii. ‘ aulnes de toylle dargent plainne pour fairre vne robbe a la ‘ fille de Madamme de Hontelles pour le jour quel fut marrie a ‘ Monsieur de Bodouel.’ The Queen also bequeathed to her a head-dress in her Testamentary Inventory, drawn up in the end of May or beginning of June 1566, where it is thus entered:—‘ A Madame de Boduel, vne couiffe garnye de rubiz perles et ‘ grenatz.’<sup>2</sup>

We learn from Knox ‘that the Queen was desirous that the right to the lands of Nether Hales, in the shire of Edinburgh and constabulary of Haddington. His charter was granted at Haddington on 11th June 1566, in presence of George Broun of Colstoun, Patrick Quhitlaw of that ilk, William Hepburn of Crauch, Mr. George Hepburn, rector of Hacht, and Mr. John Spens, burgess of Edinburgh, and was confirmed by a charter under the Great Seal at Edinburgh on the same day. (Appendix of Documents, No. V.)

<sup>1</sup> Lindsay's Chronicles of Scotland, vol. ii. p. 570.

<sup>2</sup> Inventories of Mary Queen of Scots, pp. 110, 162.

' marriage might be made in the Chapell at the Masse ; which  
' the Earle Bothwell would in no wise grant.'<sup>1</sup>

The marriage ceremony was performed, not in the Chapel of Holyrood, as the Queen wished, but in the Church of the Canongate ; and in the Kirk Session Records of that parish the event is thus recorded :—' Feb. 24, 1565-6, James Erll ' Boduell—Jane Gordoune, sister to the Erle of Huntlie, 1, 2, 3. ' Ma[rried] in our awen [kirk].'

With the marriage the first stage of the proceedings connected with the dispensation comes to an end.

<sup>1</sup> Other notices of Bothwell's religious scrupulosity occur about the same time. Thus Randolph, writing to Cecil on 7th February 1565-6, refers to the proposal to confer on Darnley the order of the Cockle, and adds, 'Divers ' lords have been . . . requyred to be at the masse that daye. Some have ' . . . refused . . . and of them all Bothwell is the stoutest' (quoted in Queen Mary's Inventories, p. xlvi. note). Bothwell, with the Earls of Murray and Huntly, declined to enter the Chapel Royal at Stirling at the baptism of the Prince by the Archbishop of St. Andrews, ' becaus it was done against ' the poyntis of thair religioun' (Diurnal of Occurrents, p. 104) ; and in the previous year Knox records of Bothwell that neither he nor the Earl of Huntly went to masse, ' albeit they were in great favour with the Queen.' (Works of John Knox, vol. ii. pp. 514, 520.) On this subject Mr. Robertson writes: 'We learn from the Knight of Lethington's verses 'On the Miseries of ' 'the Time,' that men such as Bothwell, 'quha in thair wordis appeiris rycht ' godlie, bot yit thair warkis the plaine contrar declaris, were known by ' 'the name of the 'Fleshlie Gospellaris.'

' Thaik think it weill, an thay the Paip do call  
' The Antichryst ; and mess idolatrie ;  
' And syne eit flesche upon the Frydayes all,  
' That thaik serve God rycht than accordinglie,  
' Thocht in all thingis thaik leif maist wicketlie.'

(Poems of Sir Richard Maitland. Inventories, p. xciv.)

## II. THE EARL OF BOTHWELL—HIS DIVORCE FROM LADY JANE GORDON—HIS MARRIAGE TO THE QUEEN; AND ITS RESULTS.

THE first part of the history of the Dispensation has shown that it was procured to enable the Earl of Bothwell and Lady Jane Gordon to complete their marriage, notwithstanding of their relationship to each other within the forbidden degrees; and in most cases we should have heard no more of such a document after its primary purpose had been fulfilled. But, in the present instance, the most curious and important events with which it came to be connected have yet to be related.

The marriage, as we have seen, was celebrated on the 22d of February 1566, and in little more than a year the Earl of Bothwell became the husband of the Queen, while Lady Jane Gordon was still alive.

The circumstances which led up to this event—the turning-point in the Queen's life—have been related by many writers, and in such wise as to make them fit in with opposing theories of her motives and conduct. On the present occasion it will not be necessary to dwell on them in detail, except in their relation to the Dispensation. It has been noticed that at one time the prepossessions of the Queen were against Bothwell, but it is plain that ere long his powerful position and steady adherence to

her interests attracted the royal regard, inspiring Mary with the feeling that among the turbulent nobles by whom she was harassed, there was at least one on whose strong and steady arm she could lean.<sup>1</sup>

To glance first at the public events which naturally led her to this mind, we may say that they date specially from the murder of Rizzio, in March 1566, when Bothwell with Huntly united in maintaining the cause of the Queen.

The result of Bothwell's increasing importance was obvious throughout the celebrated conference at Craigmillar in December 1566, where his position was conspicuous and influential. It was there represented to the Queen by the Secretary Maitland, that if she would consent to pardon Morton and his companions in exile, means might be found to obtain a divorce between her and her husband. The Queen at first answered that if a lawful divorce might be obtained without prejudice to her son, she might

<sup>1</sup> In the instructions with which at a subsequent period Mary entrusted Sir Robert Melvil, as her ambassador to the English Court, with explanations of her marriage, she refers to Bothwell 'as ane quha is wisdome, valyeantnes, ' and utheris gude qualiteis, mycht be weill comparit, or rather preferrit, ' to ony uther nobillman in oure Realme, and his Hous honourabill and ' ancient,' and proceeds to dwell on his services to her: 'But indeid his ' faythfull and uprycht service, evir sen he come to manis state, spent and ' bestowit for ws and in our querrell, for furhsetting of oure authoritie, quha ' evir ganestude it, wes na small motife in oure consait in making of oure ' choyse, the rather because nane, or verie few, of all the nobillmen ar abill ' in that point to debate with him, seing at sum tyme or other the maist part ' of theme had leaft ws, he exceptit.' (Bishop Keith's History, vol. ii. p. 603.)

be induced to consent to it. To this ‘the Erle of Bothwel ans-  
‘ werit that he dowtit not bot the devorcement micht be maid, but  
‘ prejudice in any wyse of my Lord Prince; alleging the example  
‘ of himself, that he ceissit not to succeid to his fatheris heritage  
‘ without any difficulty, albeit thair was devorce betwixt him and  
‘ his mother.’<sup>1</sup>

Further consideration led the Queen to decline to proceed with a divorce, and soon afterwards her fierce counsellors entered into a bond for the destruction of her husband, in which the prominent actor was the Earl of Bothwell; while (in Mr. Hosack’s words) ‘we may conclude from subsequent events that Bothwell had determined, with the aid, and probably at the instigation, of his associates, to marry the royal widow. But as the Earl was already married, it would be necessary to procure a divorce; and it is alleged, and it is probable, that with this object he obtained a restoration of the consistorial jurisdiction of the Archbishop of St. Andrews, which had been abolished by the Convention of States in 1560.’<sup>2</sup>

At the baptism of the Prince, which took place at Stirling on the 17th of the same month of December, Bothwell’s place in the arrangements was so prominent, that although the circumstance may be regarded as a tribute to his powerful position in the state, yet it may not unfairly be held to combine the personal favour of the royal mother. According to a contemporary writer, ‘Bothwell is

*See p. 10, 7.*

<sup>1</sup> Keith, vol. ii. p. 293.

<sup>2</sup> Hosack’s Queen Mary, vol. i. p. 172.

‘ appointed to receive the ambassadors, and all things at the christening is at his appointment, and the same scarcely liked by the rest of the nobility.’<sup>1</sup>

Other circumstances, however, in the relations between the Queen and her great subject can hardly be ascribed to other than motives of personal regard.

It is at the time of the Prince’s baptism that the contemporary diary of events, produced at Westminster in the proceedings against Queen Mary, records, under the date of 3d December, ‘ Thai [the Queen and Bothwell] came to Edynbrough, and hir speciall cayr was upon the Erle Bothwells preparations of claything for the baptism. About this tyme cam my Lord of Bedford into Edynbrough.’<sup>2</sup>

As to the grandeur of the apparel worn by Bothwell at the baptism, Buchanan writes—‘ Regina, non modo pecunia sed opera etiam et industria, contendit ut Bothuellius inter cives et hospites singulari cultus magnificentia conspiceretur.’<sup>3</sup>

Whatever weight may be attached to these statements, we have evidence that the Queen, a few months later, *did* confer a

<sup>1</sup> Forster to Cecil, 11 Dec. Tytler, vii., p. 54.

<sup>2</sup> This document was produced by the Earl of Murray at the conference at Westminster in 1568, and is printed ‘ from a copie marked with Secretary Cecil’s own hand,’ in Anderson’s Collections, vol. ii. p. 269, under the title of ‘ A paper containing a short recital of some material passages concerning Mary Queen of Scots, by way of diary, from the birth of her son to her goeing into England.’

<sup>3</sup> Rerum Scoticarum Historia, lib. xviii. c. 5.

gift on Bothwell, which, while it may seem to give credibility to what is said by the anonymous diarist and the hostile Buchanan, is remarkable for its apparent contradiction to the religious associations of her education.<sup>1</sup>

This gift was taken from the rich store of vestments and ornaments of the Cathedral Church of Aberdeen, which having been

<sup>1</sup> Mr. Hosack has said—‘There is one undisputed point in the history of Mary, namely, that throughout her life she was true to her religion.’ The act in question, as I have said, seems out of harmony with the feelings which in such a character we feel a right to anticipate, especially when we bear in mind the profligacy of the recipient, and his notorious hatred of the Roman faith and its rites. There are other circumstances also in her history which suggest that, while the Queen was a devoted adherent of the Roman See, yet her allegiance admitted of a line of conduct in religion based at least in part on considerations of policy. Mr. Robertson has referred to some of these (*Statuta Eccles. Scotic.*, Pref. p. clxxii.), to which may be added the fact, that for a time she came ‘to have a very good liking of the Book of Common Prayer, receiving an English chaplain to her service that is a good preacher, and she hath heard hym in his sermons invaye agaynst farassicall justification of workes, and all kynde of Papistry, and that to the advancement of the gospel with attentive and contented eares.’ (*Anderson’s Coll.*, iv. 113, part i.)

A remarkable privilege, which I have not seen elsewhere noticed, was accorded to Mary while she was a prisoner and deprived of the rites of her religion, by which she was enabled to partake of the Eucharist at her own hand. It is thus referred to in the Commentary of Cornelius a Lapide (Ed. Antwerp, 1639, p. 484), on the 26th chapter of the Gospel of St. Matthew (v. 27) :—“Quo circa olim tempore persecutionum Christiani omnes quotidie communicabant, ut se roborarent ad martyrium; immo Eucharistiam domum deferebant, illamque mane suis manibus sumebant (uti fecit nuper Maria Stuarta Scotiae Regina, dum in Anglia captiva detineretur, nec sacerdotem secum habere posset).”

committed for safety to the keeping of the Earl of Huntly by the Bishop of the See in the year 1559, for escaping the general destruction which overtook such articles in Scotland, had been brought, with the furnishings of the Earl's house of Strathbogie, to Holyrood, on his forfeiture after the defeat at Corrichie in 1562.

We discover the subject of the Queen's bounty specified in an inventory of her moveables, originally made in December 1562, where her chamberlain, after recording among other ecclesiastical furniture, 'ten pece of caippes, chasubles and tunicles, all of 'claith of gold, and thre of thame figurit with reed, and the rest 'with quhite and yellow; the thre quhite is auld:' adds the following note to account for part of them given away:—'In 'Merche 1567 I deliuerset thre of the fairest quhilk the Quene gaif 'to the Lord Bothuil, and mair tuke for hirself ane caip, a cha- 'suble, foure tunicles to mak a bed for the king [Prince James], 'all brokin and cuttit in her awin presence. Ressauit ane.'<sup>1</sup>

<sup>1</sup> According to Mr. Robertson, 'the Cathedral could show robes and hangings made from the cloth of gold taken in the English tents at Bannockburn, or woven in the looms of Bruges and Arras, of Venice and Florence. The meagre descriptions in the inventories do not allow us in every case to follow the history of the vestments which were sent from Aberdeen to Strathbogie, and from Strathbogie to Holyrood. But there is at least nothing to forbid the suspicion that the copes, chasubles, and tunicles of cloth of gold which the Queen profaned to secular uses in March 1567, were relics of the proudest triumph ever gained by Scottish arms; and that the spoils which Bruce had set apart, in the service of religion, to nerve the hearts of his people in their struggle for national life, were given by her who inherited his throne and held his faith, to make a showy doubllet for the needy vainglorious profligate Bothwell.' (Inventories of Mary Queen of Scots, p. 53, and Pref. p. xxvi.)

We left the current of events at the baptism of the Prince in December 1566.

The murder of Darnley took place on the 9th of February 1567. The ostensible trial and acquittal of Bothwell occurred on the 12th of April. Two days later the Parliament met, when an Act was passed confirming the grant previously made to Bothwell of the keepership of the castle of Dunbar; and another (ascribed at the time to Bothwell's influence), in which all penal laws against the Reformed religion were abolished, and its adherents released from the authority, power, and jurisdiction of the Roman See.<sup>1</sup>

On the last day of the Parliament (the 19th of April) Bothwell gave an entertainment, in the evening, to a large party of the nobility, in the house of Ainslie, the keeper of a tavern in Edinburgh, in the course of which he laid before them a bond, which he, in a measure, compelled them to subscribe. This document set forth the belief of the subscribers in the innocence of the Earl of Bothwell of the odious crime of the King's murder imputed to him, and proceeded to state that if the Queen should prefer him to the honour of being her husband, they would do what in them lay to support and set forward the marriage, and take part against those who might impede or hinder the same.<sup>2</sup>

On the 21st of April the Queen proceeded to Stirling, to visit her infant son, then living in the castle of that place. On the

<sup>1</sup> Acts of Parliament of Scotland, vol. ii. p. 548.

<sup>2</sup> Keith's History, vol. ii. p. 563. The subscribers of this document made no account of Bothwell's existing marriage, and assume that it was null, or would be annulled.

24th of April, on her return towards Edinburgh, she was met at the Foulbriggs by Bothwell, at the head of a party of horsemen, and along with the Earl of Huntly, Secretary Maitland, Sir James Melvil, and other attendants, carried off to the castle of Dunbar.

During her residence at Dunbar, which lasted for five days, viz. till the 29th of April, the Queen consented to marry Bothwell, alleging afterwards that 'he partlie extorted and partlie 'obtenit oure promeis to tak him to oure husband.'<sup>1</sup>

At this time the Earl of Bothwell was the husband of Lady Jane Gordon; and for carrying out his union with the Queen, it became necessary that steps should be taken for annulling his first marriage.

For this purpose two distinct lines of procedure were resorted to.

In the one, an action concluding for divorce was brought, at the instance of Lady Jane Gordon, before the Commissaries of Edinburgh, then recently constituted judges, in place of the suppressed consistorial court of the Archbishop of St. Andrews.

In this suit the first precept, 'for the partising of the Erle of Bothwell and his wyiff, was direct furth from the Commissaries of Edinburgh'<sup>2</sup> on the 26th day of April, being two days after the Queen's abduction to Dunbar; and proof of the Earl's adultery with Bessie Crawfurde, one of his wife's maid-servants, having been

<sup>1</sup> Keith's Hist., vol. ii. p. 599.

<sup>2</sup> Cecil's Diary; Keith, Hist., vol. ii. p. 575.

furnished, the sentence of divorce was pronounced on the 3d of May.<sup>1</sup>

It has been a subject of discussion whether the subsequent marriage of the divorced adulterer was lawful in the judgment of the Reformed Church;<sup>2</sup> but, in any event, the divorce could not affect the validity of Bothwell's marriage with Lady Jane Gordon in the eyes of the Queen, and those whose opinions rested on the canon law of Christendom, because by it that marriage, fenced as it had been by the necessary dispensation, was indissoluble.

To evade this difficulty a series of extraordinary proceedings were resorted to.

A suit was instituted before the recently restored court of the Archbishop of St. Andrews, at the instance of the Earl of Bothwell, concluding for a declaration of nullity of his marriage with Lady Jane Gordon, on the ground of their relationship within the prohibited degrees, and their marriage without a dispensation.

This action was initiated on the 27th of April, in the court of the same primate, by whom the dispensation had, as we have seen,

<sup>1</sup> The nullity of this sentence is urged in the Book of Articles, on the ground of 'the lak of pruif and insufficiency of the witnes' (Hosack, p. 543.)

<sup>2</sup> According to the Reformed doctrine, the divorced adulterer could certainly not marry so long as the divorcing spouse was in life (Riddell's Peerage and Consist. Law of Scotland, vol. i. pp. 394-394, 434, 437), cited by Mr. Robertson in his Statuta Eccles. Scotic., p. clxxxi., where he adds, that 'it was doubted whether divorced adulterers could marry again in any circumstances; and although the General Assembly finally hesitated to affirm that they could not, it had no hesitation in ordering the superintendents to forbid ministers to celebrate such marriages, under pain of deposition.'

been granted little more than a year before; and on the 7th of May sentence was given that the marriage was radically null, in respect that the parties were related to each other within the forbidden degrees of consanguinity, and consequently were debarred from lawful marriage without a previous dispensation having been obtained.

On the day which followed, viz. the 8th of May, a proclamation was made at the palace of Holyrood, announcing that the Queen had resolved to marry Bothwell; and on the 15th of May the ill-omened ceremony was celebrated at Holyrood according to the Reformed rite.<sup>1</sup>

It is obvious that if the dispensation under which Bothwell's first marriage took place had been produced in the suit before the court of the Archbishop, it would have proved an effectual barrier to the sentence of nullity which was then pronounced, and consequently to his subsequent union with the Queen.

In this light the later history of the dispensation becomes a subject of curious interest and importance.

It was the general belief of the time that the whole affair of the divorces was one of collusion,<sup>2</sup> and in the articles given in by the

<sup>1</sup> In the Queen's instructions to the Bishop of Dunkeld on his mission to the Court of France, with explanations of her marriage, she makes a reference, which appears to have been meant for that ceremony, as having been arranged without 'weying quhat was convenient for ws that hes been norissed in our 'awin religioun, and nevir intendis to leif the samyne for him or ony man 'upoun earth.' (Keith's Hist. ii. p. 599.)

<sup>2</sup> John Craig, the brave minister of Edinburgh, who at first refused to

Earl of Murray at Westminster, it is asserted that the sentence of nullity of Bothwell's marriage 'for consanguinitie standing betwix ' him and his wiff, procedit onelie becaus the dispensatioun wes ' abstracted.'

The chief points which now occur for consideration relate to the motives which led to the suppression of the Dispensation,<sup>1</sup> and to the question of the Queen's knowledge of its existence.

proclaim the banns of marriage between the Queen and Bothwell, at a personal interview with the latter in the Council, laid to his charge, among other things, 'the suspicion of collusion betwix him and his wyfe, the sudden 'divorcement and proclaiming within the space of four dayes, and last the 'suspiciooun of the Kingis death, quhilk his mariage wald confirm. Bot he 'answerit nothing to my satisfactioun.' (Anderson's Collections, ii. p. 280.) It is certain that the design was no secret even before the proceedings had commenced. This appears by an anonymous letter, sent from Scotland, probably to Cecil, and dated 24th April 1567 (the day of the Queen's abduction), which thus begins : 'This is to advertise you that the Earl Bothwell's wife is 'going to part with her husband, and a great part of our lords have sub- 'scribed the marriage between the Queen and him.' (The letter is printed in Tytler's Hist. of Scotland, vol. vii. p. 88.)

<sup>1</sup> Writing in 1866, the late Mr. Joseph Robertson remarks :—'It was no doubt destroyed before Bothwell's divorce. The preservation at Hamilton of the evidence on which it was granted may be accounted for by the deep interest of the Hamiltons in possessing themselves of a writ which might help them to challenge the legitimacy of any issue of the marriage between Mary and Bothwell' (Statuta Eccles. Scotic., vol. i. p. clxxxii note.)

In the following year Mr. Burton, after discussing the point, writes— 'There is still a mystery about this Dispensation. If the ground on which it proceeded is given accurately in Tytler's inquiry (Edit. 1790, p. 401), it sets forth what is contradicted by all the books of genealogy, that an Earl Bothwell was married to Margaret, daughter of George, second Earl of Huntly' (Hist. of Scot., vol. ix. p. 385, edit. 1867). I have previously re-

As bearing on the first, it may be here stated that in the suit for nullity of marriage before the court of the Archbishop, Lady Jane Gordon was cited as a party on Saturday the 3d of May, to appear on the following Monday before the judges delegated for the trial, within the Church of St. Giles in Edinburgh.

Among the witnesses adduced was Alexander Gordon, Bishop of Galloway, her uncle, by whom the marriage ceremony, which had united Lady Jane to Bothwell, had been celebrated in the previous year. On the 5th of May some of the witnesses having been examined, the judge assigned the following day for production of their depositions. On the 6th of May, the procurator for Lady Jane Gordon appeared, and having made some general objections in law to the depositions, renounced further defence.

On this, the judge assigned the next day for pronouncing judgment, and accordingly on the 7th of May, or four days after the first citation of the defender, he gave sentence in favour of the Earl of Bothwell, ‘declaring the marriage to be, and to have been, ‘ null from the beginning, in respect of their contingence in blood, ‘ which hindered their lawful marriage without a dispensation ob-‘ tained of befoir.’<sup>1</sup>

ferred to this mariage, which certainly occurred, and documentary evidence of it in the Gordon charter-chest is noticed hereafter (p. 72). Mr. Burton, in the second edition of his graphic history, refers to the discovery of the Dispensation, and adds, ‘No one can anticipate in anything relating to Queen ‘ Mary how wide may be the discussions to be opened by this discovery.’ (Vol. iv. p. 223, note.)

<sup>1</sup> For an Account of the Sentences of Divorce, see Appendix of Docu-

From what we now know of the circumstances, there can be little if any doubt that the Dispensation was at this time in the hands of Lady Jane Gordon; and the question naturally occurs, Why did she not produce it in court, and thereby maintain her position as the lawful wife of the Earl of Bothwell?

Various reasons may be suggested, which will commend themselves with varying force as people have or have not made up their minds on the character of Bothwell's relations with the Queen.

By those who believe that Mary had become enamoured of her powerful subject, and had resolved to marry him, the motive of Lady Jane's reticence may be regarded as dutiful acquiescence in the royal designs.

To this subordination of personal feeling, others will be disposed to add various reasons of family policy, for it must not be forgotten that with the public measures which contributed to establish the Queen's confidence in Bothwell the Earl of Huntly was closely identified,<sup>1</sup> and that the restoration of his house from the forfeiture

ments, No. II. In the Book of Articles, it is stated that the judge was compelled by threats to pronounce his judgment, and at York there was produced to the Commissioners, besides the two processes of divorce, 'an instrument of ' compulsion proving the said Mr. John [Manderston, the judge] to have been ' constraint to leid the said process of divorce.' (Goodall, vol. ii. p. 87.)

<sup>1</sup> They not only appear as mixed up and acting together in public and family affairs up to the time of the Queen's marriage, but even at the last they are found together in a vain attempt to levy fresh forces on her behalf. (See note on next page.)

under which it had been depressed since the time of Corrichie was formally completed in Parliament on the 19th of April, being the same day on which the celebrated banquet in Ainslie's tavern occurred, when Huntly joined with the other nobles in recommending Bothwell, his sister's husband, in marriage to the Queen.

It seems plain, therefore, that the Earl of Huntly was a consenting party to the annulling of his sister's marriage with Bothwell, and it may be thought that the restoration of the family may have influenced Lady Jane in the position which she assumed in the suit.<sup>1</sup>

<sup>1</sup> That the arrangements for the divorce caused no family divisions appears plain from the fact of the personal appearance in Parliament of James, Earl of Bothwell, with 'Jonat, alias Jane Gordoun, his spouse,' along with the Earl of Huntly himself, as parties in the reduction of the forfeiture (Acts of the Parliaments of Scotland, vol. ii. p. 573). It is a remarkable fact also that after Bothwell's retreat from Carberry, he first took refuge with the Earl of Huntly at Strathbogie; and only after the failure of an attempt to raise a fresh force, retreated to the castle of Spynie, the seat of his uncle, the Bishop of Murray. This appears in Throkmorton's letter to Queen Elizabeth, dated 16th July 1567. 'The Earle Bodwell hath ben of late with the Earl of Huntleye at Strawboggie, in the northe of Scotlandne, where he hathe attempted to levy force and make some styrre. But though the Earl of Huntleye were holden suspected to theys men, he, fyndynge Bodwell so lytle favored in all quarters, wyll not adventure muche for hym. And now I heare saye the sayde earle can be contented that Bodwell shoulde myscarye, to ryd the quene and hys suster of so wicked a husbande. Whereupon I understande that Bodwell dyd hastelye retyre hymselfe awaye from the earle of Huntleyes howse in the night, into Spynaye, the bushope of Murreys house, where also yt is [        ], he wyll not make anye long tarynge, but retyre himselfe to the isles of Orkeneye, which be in number 32, whereof the quene did create him duke.' (Stevenson's Illustrations of the Reign of Queen Mary, p. 217.)

One of the statements made at the time would indeed lead us to suppose that such a motive was the main one. In the Book of Articles of the Earl of Murray, one of the allegations bears 'and to the end she mycht the mair easalie attene to the ' mariage of the murtherar quhilk culd not be quhill diuorce ' wer maid and led betwix him and his lauchfull wiff, the erle ' of huntleye's sister, the quene restorit the said erle of huntlie ' be parliament to his leving, for the quhilk he perswadit his ' sister to subscriue a procuratorie, that the diuorce mycht be per- ' sewit in hir name.'<sup>1</sup>

The question will remain open whether Lady Jane's conduct was guided, after all, with a view to the pleasure of her husband and her brother; or whether, as we have said, in the knowledge of the Queen's affection for Bothwell, she sacrificed her own feelings and position for its gratification.

But it may also be a question whether her feelings on this point were so strong as to require any powerful motive to overcome them. There is nothing to show that Bothwell had been cruel or unkind to her during the time of their union; but from what we know of his rough nature, it is easy to believe that a year's experience of his repulsive character and gross habits may have led her to think it rather a release than otherwise that her connection with him should be brought to a termination, especially when we bear in mind her own wise and sweet character as delineated by her son. It seems certain also that in giving her consent to the measure, she

<sup>1</sup> The Book of Articles, in Hosack, vol. i. p. 542.

was enabled to make special arrangements for preserving her legal rights as the wife of Bothwell, even when her marriage with him had been declared to be no marriage, as will be seen from the documents afterwards quoted, showing that she continued to draw her jointure from Bothwell's estate to the end of her long life, notwithstanding the annulling of her marriage and two forfeitures of the lands.<sup>1</sup>

In any way, the Dispensation, which by its production might have altered the future history of the Queen, was withheld, and it remained unheard of from that time till about four years ago, when, as I have said, it was brought to light among the family papers at Dunrobin. Its occurrence there is to be accounted for by the marriage of Lady Jane to Alexander, Earl of Sutherland, which took place in the month of December in the year 1573, when she doubtless carried with her the important document, and had it deposited in the charter-chest of her husband.<sup>2</sup>

<sup>1</sup> In the ordinary course of law the dower and marriage gifts would have been restored to the parties. Thus, on 13th December 1558, a sentence of divorce was pronounced by the Commissary of Murray, in a suit between David Dunbar, son of Robert Dunbar of Durris, and Margaret Dunbar, his wife, on the ground that they being within the third and fourth degrees of consanguinity had married without a dispensation. The marriage was annulled as having been inept from the beginning, and the dowry and nuptial gifts were directed to be restored 'dotemque et donacionem propter nuptias si 'que date fuerant parti restituendas fore et restitui debere nostra sententia 'adjudicantes.' (Liber. Off. S. Andr., p. 168. Pref. p. xix.)

<sup>2</sup> It is singular that this curious document should have remained so long

The question of the Queen's knowledge of the Dispensation is mainly important as an element in determining the nature of her relations with Bothwell.

Mr. Hosack in the second volume of his important work has referred to the recovery of the Dispensation, and gives various reasons for the belief that the Queen knew nothing of its existence. ‘It is infinitely more probable that the Queen was ‘kept in ignorance of the Dispensation than that she should ‘have consented to a marriage which she knew at the time was ‘not only absolutely void, but which could not by any possibility ‘be rendered valid.’<sup>1</sup>

While it is obviously impossible to adduce evidence which can be regarded as final, it seems to me that in estimating probabilities there is ground for coming to a different conclusion.

In the first place, we must bear in mind the condition of Scotch society, which made it merely a piece of prudence that a dispensation should form an ordinary part of a marriage settlement. The process on which the Dispensation for Lady Jane Gordon's marriage with Bothwell proceeded was to some ex-

in its obscurity. The charters no doubt were carefully examined in last century during the great law case which involved the descent of the family honours, and in recent times they have been referred to by several of our best record scholars who had free access to them. An elaborate historical account of the Sutherland family, based on the charters at Dunrobin, was recently prepared for the ‘*Origines Parochiales Scotiae*,’ but it makes no allusion to the Dispensation.

<sup>1</sup> *Mary Queen of Scots and her Accusers*, vol. ii., Pref., p. viii.

tent of a public character, involving the examination of witnesses of note in presence of the secretary of the Primate, and it seems probable that the reading of the Dispensation had formed a preliminary at the marriage ceremony. We have seen also that the Queen took a special and personal interest in the marriage arrangements.

Looking at these circumstances, it seems to me that the Queen's knowledge of the Dispensation is no unreasonable supposition.

Besides, we have abundant evidence that the Queen was herself well aware of the necessity for such marriage dispensations.

During the spring of 1565, Mary, after much hesitation, finally resolved to take Henry Darnley to be her husband, and it appears from evidence, which seems sufficient, that she was espoused or 'handfasted' to him at Stirling in the early part of April of that year.<sup>1</sup>

<sup>1</sup> 'It must be admitted,' writes Mr. Hosack, 'that Mary on this occasion kept Throgmorton in the dark on a very important point. We now know that she had already privately married Darnley, but that they had determined to wait for the Pope's dispensation, which was necessary on account of their relationship, before the ceremony was celebrated in public.' (Hosack, Queen Mary, p. 102.) The ceremony thus referred to could hardly be called a marriage, as that was a sacramental rite which did not admit of being repeated. It is no doubt described as having taken place in presence of a priest, but so early as the thirteenth century, it was required by our canon law that espousals or handfastings should be made in presence of a priest and trustworthy witnesses. (Statut. Eccl. Scot., vol. ii. p. 68.) In a con-

On the 26th of April, Paul de Foix wrote from London to Catherine de Medici that 'Lethington arrived on the 15th of April, ' and that letters also had come to the Queen of England from ' Randolph, her agent in Scotland, informing her that the Queen ' of Scotland had married my Lord Darnley, son of the Earl of ' Lennox, the church ceremony alone being wanted to make valid ' the marriage.'<sup>1</sup>

About a month after this Throkmorton, who had been sent to remonstrate with Mary on her marriage, wrote from Scotland to the English Queen—'This Queen is so far past in this matter with ' my Lord Darnley, as it is irrevocable, and no place left to dis- ' solve the same by perswasion and reasonable means otherwise ' than by violence ; albeit, tho the matter be not yet consummate, ' neither shall be (as she hath willed me to ascertain your Majestie) ' those thrie months, in which mean time she meaneth all the best

temporary memoir addressed to Cosmo de Medici, printed by Labanoff, the ceremony is described as having occurred in Stirling Castle, in an apartment of David Riccio—'Fossero da un capellano catholicamente sponsati in camera di esso David.' (Labanoff, vol. vii. 67.) We have an example of a formal handfasting, to be followed (after dispensation) by marriage, in the case of the Countess of Athol, one of the ladies of honour of the Queen's household. Her contract of marriage with the Earl of Athol was dated on the 1st April 1557, and it stipulated that the Earl shall instantly 'wed and handfast' Margaret Fleming ; shall send to Rome with all possible despatch for dispensation for their marriage, notwithstanding the impediment of consanguinity ; and shall, before Martinmas next, marry her solemnly in face of the Church. (Queen Mary's Inventories, p. li. note.)

<sup>1</sup> Teulet, *Papiers d'état*, vol. ii. p. 193 ; see also pp. 195, 196.

' means she can devise to procure your Majesties acceptation and allowance of the matter.<sup>1</sup>

The interval was necessary for enabling the Queen to obtain a dispensation for her marriage, in consequence of her relationship to Darnley being within the forbidden degrees.

For this purpose William Chisholm, Bishop of Dunblane, was despatched to Rome,<sup>2</sup> and having obtained the Pope's dispensation, he arrived with it at Edinburgh on the 22d of July. On the same day the banns of marriage were proclaimed, and on Sunday, the 29th of July, the marriage was solemnised in the Chapel-Royal at Holyrood.

<sup>1</sup> Keith's Hist. ii. p. 283. Mr. Hosack has drawn attention to a passage in one of the letters alleged to have been written by Queen Mary to Bothwell, which, otherwise unmeaning, would exactly describe the state of affairs under her engagement to Darnley. ' My only wealth receive therefore in as good part the same as I have received your marriage with extreme joy, that which shall not part forth of my bosome while that marriage of our bodies be made in publick, as sign of all that I either hope or desire of bliss in this world.' Mr. Hosack believes that this was a genuine letter of Queen Mary, addressed, not to Bothwell, but to Darnley.—Mary Queen of Scots, vol. i. pp. 219, 220.

<sup>2</sup> The bishop's mission was kept a secret, and, in the words of Mr. Robertson, ' such was the mystery in which it was thought necessary to wrap up the affair, that the envoy had returned to Scotland, the nuptials had been solemnised at Holyrood before the Pontiff communicated to the cardinals at Rome, that he had granted a dispensation for the marriage of the Queen of Scots with a certain Englishman, her kinsman, receiving their promise that they would defend the Catholic religion to the utmost of their power.' (Statut. Eccles. Scotic., vol. i. p. clxix., where the statement of Raynaldus is quoted.)

This much has been said of her marriage with Darnley, as bearing on the Queen's knowledge of dispensations required by persons marrying within the prohibited degrees.

To recur to her marriage with Bothwell. Under whatever circumstances that union was effected, whether she was prompted to it by her own blind passion, or was the victim of political intrigue and vaulting ambition in others, it was no sooner over than she became conscious that she must face the grievous imputation of having wedded a man who was at the same time the husband of another woman.

She accordingly despatched ambassadors to the Courts of France and England to notify her marriage with Bothwell, and to explain away the suddenness of its consummation.

The explanations to the Court of France were conveyed by the Bishop of Dunblane, and were contained in an elaborate letter of instructions with which he was intrusted.<sup>1</sup>

He was to excuse the Queen for the celebration of her marriage without previous intimation of her intentions to the King, the Queen, her uncle, and other friends ‘quhilk excuse mon be chieflie ‘groundit upoun the trew report of the Duke of Orkney his ‘behaviour and proceedingis towardis us befoir and quhill this tyme ‘that we haif bene maid content to take him to oure husband.’

<sup>1</sup> The title of this document is ‘Instructioun to oure trusty Counsellour ‘the Bishope of Dunblane, to be declarit be him on oure behalfe to oure ‘bruther the maist christin King of France, the Quene our gude moder, ‘our uncle the Cardinall of Lorane, and otheris oure friendis. At Edinburgh, ‘the day of May 1567.’ (Anderson's Collections, vol. i. p. 89. Keith, vol. ii. p. 592.)

With respect to the point of Bothwell's previous marriage to Lady Jane Gordon being still binding, the Bishop was thus directed:

' Item, in cais it shal be obiectit to you be the King, the Quene, or  
' our uncle, or any vther friendis, that oure present marriage can  
' not be lauchfull in respect that he quhomewith we ar presentlie  
' joynit was befoir couplit to a wyff, ye sall reply and answer  
' according to the verie treuth, that albeit he was befoir mareit,  
' yit the mariage with him, the formar contract and band wes, be  
' the ordoure of law expressit in the canonis ressavit and prac-  
' teysit in the realme, for lauchfull causs of consanguinitie, and  
' vtheris relevant, dissolvit, and the proces of divorce ordourlie  
' led; swa that we on the ane part, and he on the vther syde,  
' being bayth fre, the mariage mycht lauchfullie and weill aneuch  
' be accomplishit be the lawis of this realme, as now at Goddis  
' pleasure it is, quhairby the foirsaid objectioun, or ony the lyke  
' tending to this fyne, may be elydit and set by.'

Sir Robert Melvill was entrusted with the Queen's explanations to her sister of England. The instructions by which he was to be guided in meeting any similar objections to the marriage were thus expressed: 'Item, it may be that our said gude suster sall allege  
' oure present mariage not to be lauchfull, in sa far as the Duke  
' oure husband was couplit to a wyff of befoir quha yet levis, ye  
' sall answer that be the lawis ressawit within oure realme, and  
' oftimes practisit, as is notour aneuch, his formar marriage was dis-  
' solvit, and the proces of divorce ordourlie led for resolute causis  
' of consanguinitie and utheris, befoir oure mariage with him, and

' swa we mycht lauchfullie consummat the saymn, for it is na new  
 ' thing nowther in Scotland nor Ingland.'<sup>1</sup>

That the Queen should stay herself on a sentence of divorce between Bothwell and his wife grounded on the want of a dispensation, and that, nevertheless, this dispensation should have been granted only in the previous year, after formal proof of its necessity, by the same official who now pronounced the sentence, is certainly a very remarkable and suspicious circumstance. It does not necessarily follow that the Queen was a party to the collusion, with

<sup>1</sup> Anderson, vol. i. p. 106; Keith, vol. ii. p. 601. On the 27th of May Queen Mary addressed a letter on the subject to the Archbishop of Glasgow, her ambassador at the Court of France. This faithful friend had written to the Queen after the murder of Darnley to convey to her the many grievous suspicions which were abroad as to the authors of this foul deed, which, as he said, even reached to herself as the prime mover therein. He exhorted her to take a rigorous vengeance for it, and added, 'Rather than it be noucht  
 ' actuallie taine, it apperis to me better in this world that ye had lossit lyf  
 and all.'

The Queen now explained to him the mission of the Bishop of Dunblane to the French Court, and entreated that he would use his best efforts to second those of the Bishop, 'that ye bestow your study, ingyne, and effectual  
 ' labours in the ordering of this present messaige, and in the persuadinge  
 ' thame to quhom it is direct to beleve that thing thairin quhilk is the very  
 ' trewth, according as we have mentionat the samyn sinceirlie from the verie  
 ' beginning in our said instruction, a greit part of the circumstance quhairof  
 ' is alsweill knawin to your self as to ony man levand.' To this letter is added a postscript in French in the Queen's own hand, in which she beseeches her ambassador to forward the objects of her mission and give credence to her envoy. On the same day Bothwell wrote a letter to the Archbishop, in which, after admitting that the mission of the Bishop and the rumours which pre-

which the judge,<sup>1</sup> Bothwell, Lady Jane Gordon, and the Earl of Huntly must be charged, but a consideration of all the circumstances seems to make it highly improbable that she was in ignorance of the real state of the case.

To pursue the history of the dispensation it is necessary to advert to the Queen's feelings towards Bothwell after the marriage. These have been represented in diverse lights, but although she appears to have been occasionally unhappy, and is said to have suffered indignities from her brutal husband soon after their union,<sup>2</sup> yet the contemporary evidence seems to establish the reality of her affection, as it does her resolution to remain stedfast to him.<sup>3</sup>

Lethington represented to the French ambassador that Mary used reproaches towards him for parting her from her husband,

ceded it must have appeared strange to him, he adds, 'As materis hes fallin  
' out, we traist na nobleman being in our state and caiss wald have left  
' onything undone that we have attempted.' As to the suddenness of the  
marriage, 'the blame indeid we mon confes and underlye in sa far as sum  
' things may appeire omittit in ceremonyes, counsal taking, as utherwyse  
' that of dewitie aucht to have been done, yet the wisedome and diligent  
' cair of a faithfull servand and friend is able to remove and sett by the force  
' of mony greit accusationis, and gar the excuses be taken in gude part,  
' quhilk we doubt not bot ye will at your possibilite.' (Illustrations of the  
Reign of Queen Mary, pp. 173-178.)

<sup>1</sup> It has been suggested by some that the restoration of his jurisdiction was the Archbishop's reward for his share in the collusive proceedings.

<sup>2</sup> Hosack, vol. i. pp. 323-4. Sir James Melvil's Memoirs, p. 182.

<sup>3</sup> Mr. Robertson notices that in the month of their marriage the Queen gave some Spanish furs (which had belonged to her mother), to make a night-gown for Bothwell. (Inventories, p. xcv.)

with whom she trusted to live and die. He attempted to excite her jealousy against Bothwell, by asserting that even after his marriage he corresponded with Lady Jane Gordon, protesting his affection for her, and reflecting on the Queen. This Mary declined to credit, but Maitland answered that the letters would show that he was only speaking the truth.<sup>1</sup>

<sup>1</sup> Letter from Du Croc to Catherine of Medicis, 17th June 1567, quoted in Queen Mary's 'Inventories,' p. xcii., *note*, where Mr. Robertson adds—  
'The letters and sonnets which Mary is said to have written to Bothwell are full of jealousy of his countess. The sixth sonnet alludes to her learning, and we know otherwise that she could read the *Legenda Aurea* in the original Latin. (Mr. Laing's History of Scotland, vol. i. p. 346, *note*.) It would appear from the fourth sonnet that Bothwell was not her first lover.' The passage in Laing hardly bears out the statement that Lady Jane could *read* the *Legenda Aurea*, as it merely shows that she was possessed of a copy of the work in which her name was frequently inscribed. A copy of the *Legenda Aurea* is still in the library at Dunrobin, but there is no appearance in it of Lady Jane's name. We have abundant evidence of her good penmanship—an accomplishment far from universal among the titled ladies of her day. It will be noticed that her mother, the Countess of Huntly, was unable to subscribe the marriage-contract of her daughter, her hand being 'led on the pen be the Lord Bischope of Galloway.' (P. 94.) Of the copy of the *Legenda Aurea* at Dunrobin, Mr. Joass reports that it was given by Lady Jane, the Countess of Sutherland, to her son, Sir Robert Gordon, and was bought back at the Gordonstoun sale. He adds—'I could find nothing throughout the book which I could be sure of as left by the lady's hand, unless perhaps some rather bold drawings of an arm and hand, with index finger extended, pointing to particular passages. There are some notes in a hand like that of Sir Robert, one of which is—“Blessed is he who hath not bent to evil rede his ear.”'

'In another hand is written several times, "John Maister of Suthyrland."

Sir Robert Melvil, the ambassador whom Queen Mary had recently despatched to the Court of England, after his return was admitted to three interviews with his mistress in her island prison at Lochleven.<sup>1</sup>

<sup>1</sup> The Laird of Lochleven appears to have been a good actor, and would have wished the Queen to sanction the idea that his house was not to be regarded *as a prison*. This appears in the formal record of a singular interview between him and the Queen, when he extorted from her a confession that she had willingly demitted the crown, and then, as if she were a free agent, he went on to suggest that she should pass to Stirling and there publicly declare her mind. The scene occurred four days after that on which the Queen had been compelled, against her will, to subscribe an abdication of the government. The original instrument to which I refer is preserved among the papers of the Earl of Morton at Dalmahoy, and sets forth that on the 28th of July 1567, William Douglas of Lochleven, in presence of a notary and witnesses, went into the presence of Mary Queen of Scots, and there represented to her that it had come to his knowledge that her Majesty had subscribed a demission of her crown and government in favour of her son, without his, the said William's knowledge, and that he was also informed that the nobility and certain other estates of the realm had passed to Stirling by her Majesty's command to crown the Prince, and invest him in the kingdom. He therefore desired her Majesty to declare as to her said subscription and proceedings, of which he was ignorant. 'To the quhilk her grace ansuirit that he ' was absent that culd not knew her Majestie's proceeding nor subscription, and ' maid na compulsion nor coactione thereto, noder be word nor deid.' Then the said William desired that the Queen would pass to Stirling, and there declare freely her own pleasure and will, offering to convey her Majesty thither. 'Quha ansurit that for the present sche culd nocht be prepairit to ' pas thair, bot desirit the said William that sche micht remane in his place ' and vse hir self at hir eas and quietnes as sche has done heir to fore, ' affirmand the lettres quhilkis sche subscriuit to the effect above written ' to be of propir motive, quhilkis sche now as of before the subscription

The first conference on the 1st of July was held in presence of Lord Lindsay and others, who insisted on being present by orders from the Lords of the Secret Council. Eight days afterwards Melvil was permitted to see the Queen in private. At this time he endeavoured to persuade Mary to renounce Bothwell, which she peremptorily refused to do. Somewhat later Melvil was again sent to Lochleven by the Confederate Lords, with instructions to make another effort to prevail upon Mary to give up Bothwell, and by him the English ambassador conveyed a letter to the Queen, in which he urged her to the same course. She, however, continued steadfast in her refusal, and the letter which Throkmorton wrote on the 18th of July to Queen Elizabeth represents her reasons:—‘I have also per-  
‘ suaded [advised] her to conform herself to renounce Bothwell for  
‘ her husband, and to be contented to suffer a divorce to pass betwixt  
‘ them. She hath sent me word that she will in no wise consent  
‘ unto it, but rather die, grounding herself upon this reason, that  
‘ taking herself to be seven weeks gone with child, by renouncing  
‘ Bothwell she would acknowledge herself to be with child of a  
‘ thereof ratifit and apprevit: in respect therof the said Williame protestit  
‘ that hir Majestie suld not be comptit heirefter as captiue or in prison with  
‘ hym.’

This took place at 11 o'clock in the forenoon, in presence of Thomas Dischinton of Ardross, David , pensioner of Brechin, George Douglas, and Thomas Cherie, notary-public.

At this time Douglas was in alliance with the Confederate Lords, and the selection of him and his house for the keeping of the Queen proceeded on grounds which make the statements in the instrument almost grotesquely incredible. (Regist. Hon. de Morton, vol. i. p. 25. Second Report Hist. MSS. Commn. p. 183.)

' bastard, and to have forfeited her honour, which she will not  
' do to die for it.'<sup>1</sup>

At this last interview Mary produced a letter which she had written to Bothwell, requesting Melvil to get it forwarded, but on his refusal she threw it with indignation into the fire.<sup>1</sup>

In the Book of Articles of the Earl of Murray it is set forth that to the request of the Confederate Lords made to the Queen on the 10th of June in Edinburgh, for her concurrence to the dissolution of the pretended and unlawful marriage into which she had 'unprouisitlie' entered, for the sake of her own honour, the safeguard of her son, and the quietness of her realm and subjects, ' na  
' vther ansuer culd be obtenit bot rigorous minassing on the ane  
' pairt, avowand to be revengit on all thame that had schawin thame  
' selffis in that cause; and on the vther part offerand to lief and gif  
' ower the realme and all, swa she mycht be sufferit to possess the  
' murtherar of her husband. And in farther pruif of hir inordinat  
' affectioun towardes him she convoyit a purs with gold to him be  
' Dauid Kintor the same xvi. day.'<sup>2</sup>

A passage in Throkmorton's letter to Queen Elizabeth, written from Edinburgh on the 14th July 1567, is much to the same effect :  
' The Lords aforesaid which have her in guard doe keep her very  
' straitly, and as far as I can perceive their rigour proceedeth by

<sup>1</sup> Tytler, vol. vii. pp. 126, 134, quoting Sir Robert Melvil's Declaration, Hopetoun MSS.; MS. Letter, State Paper Office, Sir James Melvil to Drury, 8th July 1567, and the letter of Throkmorton to Queen Elizabeth, from which the passage in the text is taken.

<sup>2</sup> Hosack, vol. i. p. 547.

‘ their order from these men, because that the Queen will not by  
‘ any means be induced to lend her authority to prosecute the  
‘ murder, nor will not consent by any perswasion to abandon the  
‘ Lord Bothell for her husband, but avoweth constantly that she  
‘ will liue and die with him; and saith that if it were put to her  
‘ choice to relinquish her crown and kingdom, or the Lord Both-  
‘ ell, she would leave her kingdom and dignity, to go as a simple  
‘ damsell with him, and she will never consent that he shall share  
‘ worse, or have more harm than herself.’<sup>1</sup>

‘ And, as far as I can perceive, the principall cause of her deten-  
‘ tion is, for that these lords do see the Queen being of so fervent  
‘ affection towards the Earle Bothell as she is, and being put at,  
‘ as they should be compelled to be in continual arms, and to  
‘ have occasion of many battles, he being with manifest evidence  
‘ notoriously detected to be the principall murderer, and the lords  
‘ meaning prosecution of justice against him according to his

<sup>1</sup> Soon after her confinement at Lochleven the Queen wrote a letter to Kirkaldy of Grange, complaining of the proceedings of the hostile lords. In his answer to the Queen, Kirkaldy referred to her marriage with Bothwell, ‘ meruellung that hir Majeste considerit not how that the said Erle culd not be hir lawfull husband, being sa laitly before maried with another, that he had left without any cause of partissing, albeit he wer not sa hatted for the murthour of the King her husband, requesting hir Majeste to put hym clean out of hir mynd, or elis sche wald neuer get the loue and obedience of hir subjectis,’ with other admonitions, ‘ quhilc maid hir bitterly to weep, for she culd not do it sa hastily quilk length of tym brocht to pass.’

The last sentence seems a natural reference to a real affection. (Sir James Melvil's Memoirs, p. 186.)

‘ merits. The lords mean also a divorce betwixt the Queen and  
‘ him, as a marriage not to be suffered for many respects, which  
‘ separation cannot take place if the Queen be at liberty, and have  
‘ power in her hands.’<sup>1</sup>

The Queen’s resolution to adhere to Bothwell, and to resist all proposals of a divorce from him, was maintained till the project of her marriage to the Duke of Norfolk was broached, during the conference at York, in October 1568. The instructions which she then gave to her Commissioners, and which are dated in the end of the previous month, contained the following clause :—‘ Gif thay  
‘ alledge that my marriage with the Erle of Bothwell will be ony  
‘ presumption aganis me, ye sall answer that I never condescendit  
‘ thairto unto the tyme the greitest part of the nobilitie had cleinsit  
‘ him be ane assise, and the samin ratifyit in parliament, and thay  
‘ had gevin thair plain consent unto him for my marriage, and  
‘ sollicited and perswadit me thairto, as thair handwriting, quhilk  
‘ was schawin to me, will testifie.’<sup>2</sup>

This tone of explanation, and justification of the marriage is much the same as that maintained in her instructions given immediately after the event to her ambassador to the English Court, where, after dwelling on the circumstances which had led to the union—the advice of her nobles, and the advantages to be derived from Bothwell’s powerful rule—she had to explain how she gave her

<sup>1</sup> Printed in Robertson’s History, App. xxii.; and Stevenson’s Illustrations of the Reign of Queen Mary, pp. 205-6.

<sup>2</sup> Goodall, ii. p. 342.

consent to marry a man generally suspected of her husband's death ; and 'in effect it is this—that seing he wes acquite be oure lawis, ' and be the sensament of Parliament, and had further offerit him ' reddie to do all thing for tryall of his innocencie, that ony nobil- ' man in honour aucht, we thocht the formar [to be] calumpny and ' accusatioun, and that we mycht weill aneuch tak him to husband.'<sup>1</sup>

Somewhat later, viz. on the 21st October, and after the conference at York had been closed, Mary despatched the Bishop of Ross, Lord Herries, and the Commendator of Kilwinning, as her commissioners to the Queen of England ; and in the interval her tone on the point of her marriage had undergone a modification. One part of their instructions bore, ' Item, in cais ony thing beis ' proponit concerning the marriage of the Erle Bothwell, and un- ' lauchfulnes thairof, ye sall answer that we ar content that the lawis ' be usit for separatioun thairof, sa far as the samin will permit.'<sup>2</sup>

In the following year, when the project of the Queen's marriage with Norfolk had come to be regarded with general favour, Lord Boyd was the bearer of a letter from Mary to the Regent Murray, in which she desired 'that judges should be appointed ' for 'cognoscing' the lawfulness of her marriage with Bothwell, ' and if the same was found contracted against the laws, it ' might be declared null, and she made free to marry where she ' pleased.' 'From private friends, especially by a letter of Sir ' Nicholas Throgmorton, the Regent was advertised that the

<sup>1</sup> Keith, vol. ii. p. 604. Anderson, vol. i. p. 106.

<sup>2</sup> Goodall, ii. 350.

' marriage of the Duke of Norfolk with the Queen of Scots was  
' concluded, and that they did wait only the opportunity of  
' performance.'<sup>1</sup>

The letters were submitted by the Regent to a convention of the Estates, held at Perth on the 25th July 1569.<sup>2</sup> The proposal of the Queen as to her divorce being proceeded with created great division, and objections having been made to the terms of her letter, as implying that she was still their legal queen, her friends 'made offer to procure new letters in what terms ' they pleased, so as judges were named to proceed in the ' divorce; and when they saw this not to be regarded, in a ' chaffing mood they said, 'that it was strange to think how they ' ' that, not many months past, seemed to desire nothing more ' ' than the Queen's separation from Bothwell, should now, when ' ' it was offered, decline the same.' It was answered again in ' heat 'that if the Queen was so earnest in the divorce she might ' write to the King of Denmark, and desire him to do justice ' upon Bothwell for the murder of the King, her husband. That ' done, the divorce would not be needful, and she freed to ' ' marry where and whom she pleased.'<sup>3</sup>

<sup>1</sup> Spottiswoode's Hist. of the Church of Scotland, vol. ii. p. 114. Tytler's Hist. vol. vii. pp. 232-3.

<sup>2</sup> Spottiswoode, vol. ii. p. 116. Tytler, vii. pp. 234-5.

<sup>3</sup> Spottiswoode, ii. p. 116. In a letter from the Earl of Murray to Cecil, explaining his relations with the Duke of Norfolk, and his consent to the Duke's marriage with Queen Mary, a statement occurs from which it would appear that for a time, and while there was a doubt about Elizabeth's views

The resolution which Mary had now formed to get free from her marriage with Bothwell appears in a very remarkable document, dated in May 1569, wherein she gave power to Lord Boyd to institute an action before John, Archbishop of St. Andrews, or any other competent judge in Scotland, ‘and to ‘ propone ane cause of diuorce in oure nayme contrary the said ‘ James, Erle Bothuell, for sic impedimentis as lauchfullie may ‘ be proponit.’

What these impediments were may be gathered from the first part of this mandate, where the Queen narrates, ‘Forsamekill as ‘ we ar crediblie informit be sindrie and divers noble men of our ‘ realme that the pretendit mariage sumtyme contractit and in a ‘ maner solempnizat betuix us and James, Erle Bothuell, was, for ‘ divers respectis, vnlauchfull, and may nocht of guid conscience ‘ nor law stand betuix us (albeit it seimit vtherwayis to ws and our ‘ counsall at that tyme); considering thairfor with our self, and ‘ thinking that the samen dois tuitche ws so heichlie in honour and ‘ conscience, that it daylie and hourlye troublis and wewis our sprite, ‘ quhairthrough we ar movit to seik remedy thairfor : For this caus ‘ we haif askit counsall of the gretest clarkis, best learned and expert ‘ doctouris in diuine and humane lawis, as we could haif in dyuers

of the marriage, the proposal of Mary’s divorce had obtained some sanction ; ‘ and in likewise it was devised to give consent that the [divorce] between ‘ the said Queen and Bothwell should be suffered to proceed in this realm, as ‘ it was desired by the said Lord Boyd, by reason we could not understand ‘ what was the Queen’s Majesty’s pleasure and allowance in that behalf.’  
(Robertson’s Hist., App. No. xxxiii.)

' cuntryes, be quhome we are assuretlie informit and certanelie  
' persuadit that the said pretendid maryage is on na wayis lauch-  
' full, nor can in ony wayis be the lawis be mentenit as guide,  
' nocht onlie becaus that he was befoir contractit to ane vther wyf,  
' and he not lachfullie diuorcet fra hir, bot also (althocht we was  
' informit thair wes na impedymtent), yet ther wes dyvers gret im-  
' pedimentis of affinitie and vtherwayis standing betuix ws,  
' quhilkes, gif they haid bene knawin to ws wald haif maid lett and  
' impediment to our proceedingis, and now being revelit to ws, are  
' sufficient to mak us cleirlie vnderstand we may be seperatt fra  
' him be the lawis.'<sup>1</sup>

The nullity of the Queen's marriage with Bothwell was thus to be rested, in the first instance, on the fact of the Earl's previous marriage to Lady Jane Gordon, and the illegality of his divorce from that lady.

This position is of course in direct contradiction to that which the Queen assumed in her instructions to her ambassadors in 1567, wherein she maintained that the marriage between Bothwell and Lady Jane Gordon had been dissolved, and the process of divorce led for 'resolute causes of consanguinity,' so that she and Bothwell were free to contract a lawful marriage.

Her desire to be released from Bothwell was inconsistent also with the resolution which she had frequently expressed of continued fidelity to him, and with her instructions to her commissioners at York, which, in explaining that the marriage had

<sup>1</sup> The Boyd Papers in Miscellany of the Abbotsford Club, vol. i. pp. 23, 24.

only been agreed to by her at the solicitation of her nobility, took its legality for granted.

The second plea on which Lord Boyd was to rest the suit for divorce was the existence of ‘divers great impediments of ‘ affinity and otherwise’ between her and Bothwell, which, if she had been aware of them, would have stayed her in the marriage.

It is not easy to discover the nature of these impediments, nor how they should only have come to the Queen’s knowledge at this late period.

If such a suit had been instituted, it would have been a cause of unusual perplexity to the Archbishop of St. Andrews to have had to act as judge.

He had, as will be borne in mind, granted a formal dispensation, after a regular proof of consanguinity, for the marriage between Bothwell and Lady Jane. He had annulled that marriage on the allegation that there never had been a dispensation, and now the call would have been to dissolve the union consequent on that decision, on the ground that after all he *had* granted a dispensation for the first.

It may be remarked that in this document not only does the Queen not empower Lord Boyd to put forward any plea of her having been compelled to enter into the marriage with Bothwell, but she refers to her freedom in the matter by alleging that her consent was only given after the ‘cleansing’ of Bothwell, and in compliance with the request of her nobles, while, under

certain circumstances, she would have paused, if not objected to it altogether.

But the plea of violence *was* put forward by the Queen at a later period, when she invoked the aid of the Pope for a divorce from Bothwell. In her Instructions to Ridolfi, her envoy to Rome,<sup>1</sup> dated in March 1571, she refers to the restraint used against her by Bothwell in language very like that used by her accusers in 1567. He was directed to represent to his Holiness the Queen's grief at having been taken captive by the Earl of Bothwell, and carried prisoner, along with the Earl of Huntly, her chancellor, and Lethington, the secretary, to Dunbar, and from thence to the castle of Edinburgh, where she had been detained against her will in the hands of the said Earl until he should procure a pretended divorce<sup>2</sup> between him and his wife, sister of the Earl of Huntly, her very near relation, and she was again constrained to yield her consent to him. She therefore prayed his Holiness to take order that she might be relieved either by a process at Rome, or through a commission sent into Scotland to the bishops and other Catholic judges there, according as

<sup>1</sup> The Duke of Norfolk, after his first imprisonment, resumed the hopes which he had been compelled to abjure of accomplishing his marriage with Queen Mary, and the Bishop of Ross was full of negotiations both at home and with foreign powers in the hope of its fulfilment. It was thus that Ridolfi, one of the bishop's agents, was despatched on a mission to Rome, with the view of furthering the project of a divorce.

<sup>2</sup> The divorce, it may be admitted, was a 'pretended divorce,' but the Queen did not take this view of it until the purpose of a fresh marriage required her to be free from Bothwell.

his Holiness might deem fittest, and as he would hear more particularly ere long by information from the Bishop of Ross.<sup>1</sup>

While it may be said that the Dispensation, which has suggested these remarks, must have been an element of consideration in all the processes and plans which we have noticed, it no doubt came to be soon afterwards so completely forgotten that it became a question whether it had ever been granted.

The conclusion to which a review of the circumstances connected with it has led me is, that the Queen was aware throughout of the existence of the Dispensation, and that she at least acquiesced in its collusive suppression.

The inferences to be drawn from such a conclusion, supposing it to be well founded, must be left to those who are dealing with the history of the period as a whole, and who can fairly estimate its bearing on the question of Mary's relations with Bothwell, viz. whether in them she is to be regarded as a willing agent or a helpless victim.

<sup>1</sup> Labanoff, *Receuil des Lettres de Marie Stuart*, tom. iii. p. 231.

### III. LADY JANE GORDON.

THE likeness prefixed to this volume is a faithful reproduction of the original portrait of Lady Jane Gordon at Dunrobin.<sup>1</sup>

From it we are enabled to realise the personal appearance of one who, in Mr. Burton's words, 'was in a manner drifted in among 'the stormiest incidents of her day, and then, after a short interval, ' floated off into calm waters;'<sup>2</sup> and the thoughtful, yet decided, expression of the face is in harmony with her actions under circumstances of difficulty and trial.

Her marriage with Bothwell first brings her into notice, and by associating her with individuals whose characters have never ceased to be subjects of discussion, has surrounded herself with an atmosphere of historical interest.

Of the circumstances attending that marriage I have already spoken, as well as of the incidents connected with its dissolution. These do not enable us to speak conclusively of the feelings and position of Lady Jane in the matter; but in the light of her subsequent career it seems fair to conclude that she was not indisposed to be separated from the stormy fortunes of her partner, whether the parting was required for the gratification of the Queen,

<sup>1</sup> Nothing is known of the artist, but it seems plain that the portrait was painted when Lady Jane was well advanced in years. In the records of the time she appears as 'Jean or Jonat Gordon.' She herself always signs as 'Jane.'

<sup>2</sup> Hist. of Scotland, vol. iv. p. 218.

or in fulfilment of family schemes of the Earl of Huntly, her brother. There can be little doubt that she was in possession of the Dispensation at a time when its production would have rendered the marriage of Bothwell with the Queen an impossibility, and it was not produced; and although she allowed a sentence to be passed which deprived her of the status of a married woman, yet her conjugal rights of property were preserved intact, and she continued in the enjoyment of them to the end of her life.

After the time of her separation from Bothwell we do not hear much of Lady Jane.<sup>1</sup> For some months after the event she appears to have resided somewhere south of Edinburgh, and she then took up her residence at Strathbogie, her brother's seat in Aberdeenshire.

In a letter from Throkmorton to Queen Elizabeth, dated from Edinburgh on the 22d of August 1567, he writes, ‘The Lady Bothwell, sister to the said Earl of Huntly, passed through this toun ‘within these two days, and is gone to her mother and brother in ‘the north parts.’<sup>2</sup>

It has been already noticed,<sup>3</sup> that Bothwell is represented to have written to Lady Jane after their separation. This could have been only a short-lived correspondence, if it ever took place; and

<sup>1</sup> In the Zurich Letters is one from Parkhurst, Bishop of Norwich, to Bullinger, where he refers to Lady Jane and her high character: ‘Occiso Henrico Scotiæ Rege, Regina nupsit Comiti Bothwelliæ, qui non ita pridem creatus est dux Orchadum. Uxor ejus adhuc vivit, femina nobilissima et optima ut audio. Divortium, interveniente papæ auctoritate, factum est.’ (First Series, Parker Society, No. lxxx.)

<sup>2</sup> Keith's Hist. vol. ii. p. 746.

<sup>3</sup> *Sup.* p. 33.

before the date of Throkmorton's letter, her feelings towards her late husband were far from tender, as appears from what he adds,  
‘ She hath protested to the Lady of Moray in this toun that she  
‘ will never live with the Earl Bothwell, nor take him for her  
‘ husband.’

Lady Anne Keith, the wife of the Regent Murray, was first cousin of Lady Jane Gordon, a circumstance which is more likely to have suggested this confidential communication than any sameness of political sympathy.

It may be thought that this protestation was directed against an arrangement either impossible in itself, or so improbable as to be a mere unreality, if any weight was to be given to the legal proceedings which had taken place.

For if the divorce was to be looked at as anything beyond a colourable arrangement, the idea that she might be called upon to live again with Bothwell as his wife could hardly have occurred to her as a possibility, because even if his connection with the Queen should come to be dissolved, there remained behind the formal decree of a competent court annulling her own previous marriage.

But if the divorce or annulling of her marriage was to be regarded as collusive, and attained by the suppression of the Dispensation, a measure in which Lady Jane was herself an agent, we can see that she may have foreseen the possibility of the collusive proceedings in the courts being opened up and reversed.

It was certainly the position assumed by the Confederated Lords, that all these proceedings were collusive and illegal, while of Bothwell's marriage with the Queen they maintained that 'nochttheles of Goddis law, nor na law maid be man of quahat-  
' sumevir religioun, might the same mariage leisumlie have been  
' contractit.'<sup>1</sup>

If Lady Jane then had a vision of all these being swept out of the way, we may understand her conclusion that Bothwell might yet be in a position to claim her as his wife.

For it must be borne in mind that at the time of this interview with the Countess of Murray he was still in possession of the castle of Dunbar, which was not surrendered till the last day of September, and it was not known what turn the fortunes of the fugitive might assume, or that his efforts to raise a force in the north were so utterly to fail.

The possibilities which seem involved in Lady Jane's statement to the countess, and the idea that she herself, as well as the Queen, was still somehow the wife of Bothwell, are implied in Throkmorton's letter to Queen Elizabeth already quoted, in which he says that the Earl of Huntly had come rather to desire the failure of Bothwell's last attempt at a rally, *so that the Queen and his sister might be rid of so wicked a husband.*

For some years after this we hear nothing more of Lady Jane, who probably remained quietly at Strathbogie, looking with curious interest on the vicissitudes which seemed to overtake every

<sup>1</sup> Reg. of Privy Council, in Keith, vol. ii. p. 649

party in the State, and with a mazed retrospect at the overwhelming vortex from which she had escaped.

Not long after she came to reside at Strathbogie, it happened that Alexander, Earl of Sutherland, being driven out of his own country through the intrigues of the Earl of Caithness, also came there and took refuge with the Earl of Huntly.

The earldom of Sutherland was at the time in the hands of the Earl of Caithness, as in right of the ward of the Earl of Sutherland who was a minor. We learn from Sir Robert Gordon that he used his power with great cruelty, and that not only the Earl but many of the Sutherland men were driven out of their country, and took refuge with the Gordons at Strathbogie and Auchindoun, taking their share in the fights which were going on between the Gordons and the Forbeses.

The Earl of Caithness had also inveigled the Earl of Sutherland, when only a lad of fifteen years of age, into a marriage with his daughter, Lady Barbara Sinclair, ‘ane unfitt match indeid, a youth ‘ of fyftene mareid to a woman of threttie-two yeirs; bot a match ‘ fitt enough to cover her incontinence and ivil lyff which shoe led ‘ with Y-Macky, for the which shoe wes afterwards divorced from ‘ Earle Alexander.’<sup>1</sup>

The Earl of Sutherland was a youth of seventeen when he came to Strathbogie, and he appears to have continued his residence there till he came of age in 1573, when, in the month of July of that year, he was served heir to his father, Earl John, ‘which being

<sup>1</sup> History of the Earldom of Sutherland, p. 151.

‘ done, he charged and summoned the Earle of Atholl and the  
‘ Earle of Catteynes to remove from all his lands which they or any  
‘ of thir adherents did possesse by reason of his ward.’<sup>1</sup>

It is symptomatic of the wild state of the country that the messenger of the law sent to execute the charge ‘ wes no sooner  
‘ within the bounds of Catteynes, bot Earle George caused Mur-  
‘ dow-Mack-ean-Roy kill him ;’ but at last it happened that the Earl of Sutherland, ‘ with the rest who wer banished by the Earle  
‘ of Catteynes, did returne into Southerland in the later end of the  
‘ yeir of God 1573.’

The Earl had been living in the same house with Lady Jane Gordon for several years, and their intercourse had ripened into a mutual attachment, so that, on his regaining possession of his earldom, he lost no time in completing his marriage with her. It took place at Strathbogie, in the month of December 1573.<sup>2</sup>

Lady Jane’s first husband was still alive, and she was in the enjoyment of her provision from his estates as his wife ; but so little was really known of his fate, that she may have trusted to a rumour of his death which was received in Scotland in 1573 ;<sup>3</sup> and this would seem probable, for her son, Sir Robert Gordon, in speak-

<sup>1</sup> History of the Earldom of Sutherland, p. 168.

<sup>2</sup> The Earl of Sutherland procured a sentence of divorce from his first wife, Lady Barbara Sinclair, on the ground of her adultery with Y-Macky in the same year. (History of the Earldom of Sutherland, p. 168.)

<sup>3</sup> Burton’s Hist. iv. p. 470. It was in 1573 that Bothwell’s prison was changed from Malmö in Sweden to the castle of Drachsholm in the island of Zealand. A second rumour of his death came to this country in 1575, which received general credit, and, as we know, reached the ears of Queen

ing of her divorce from Bothwell, adds, ‘This Lady Jane Gordon,  
‘ *after the death of the Earle of Bothwell*, wes mareid to Alexander,  
‘ Earle of Southerland.’<sup>1</sup>

We may thus conjecture that her motive for preserving the Dispensation was to enable her to maintain the lawfulness of her marriage with Bothwell, should any unexpected emergency lead to questions about it as well as the collusive divorces ; and we may believe that she was in ignorance of the circumstance of Bothwell’s survivance, during which the document was equally effectual in rendering her own second marriage illegal, as it was in the case of Bothwell’s marriage with the Queen.

Earl Alexander was several years younger than his wife, and was of a sickly constitution. He died at Dunrobin in 1594, when he was forty-two years old.

One of the sons of Lady Jane by the Earl was Sir Robert Gordon, the historian of the house of Sutherland. From him we learn that by reason of her husband ‘Earle Alexander his seiklie disposition, together with her sons minoritie at the tyme of his father’s death, shoe wes in a manner constrainyd and forced to tak vpon her the manageing of all the effairs of that house a good whyle, which shoe did performe with great care, to her oun credit,

Mary. In a letter to the Archbishop of Glasgow, written in May and June 1576 from Sheffield, she refers to the news of her husband’s death, and of his having confessed his own guilt of Darnley’s murder and her innocence. (Labanoff, iv. p. 311.) The real date of Bothwell’s death was 14th April 1578. (*Archæologia*, xxxviii. p. 311.)

<sup>1</sup> History of the Earldom of Sutherland, p. 145.

‘ and the weill of that familie ; all being committed to her charge,  
‘ by reason of the singular affection which shoe did carie to the  
‘ preservation of that house as lykwise for her dexteritie in manage-  
‘ ing of business.’<sup>1</sup>

As an instance of her practical mind, we are told of some of her improvements on which she seems to have entered with an energy less common in her day than now, when some of the works which she began are in the course of realisation, with the improved appliances of the present time, by her descendant the present Duke of Sutherland. ‘ Shoe wes,’ writes Sir Robert, ‘ the first that caused work and labour the colehugh besyd the river of Broray, and wes the instrument of making salt ther. The cole wes found befor by Earle John, the father of this Earle Alexander ; but he being taken away by ane untymlie and hasty death had no tyme to interpryse this work.’<sup>1</sup>

After the death of the Earl of Sutherland she took for her third husband Alexander Ogilvie of Boyne, and this she did, by her son’s account, ‘ for the utilitie and profite of her children.’ The contract of marriage between the Countess of Sutherland and the Laird of Boyne (who had previously been married to Mary Bethune, one of the Queen’s four Marys, and had been on the jury at the trial of her first husband) is dated at Elgin the 10th day of December 1599, and it is valuable for the proof which it affords of the continued exercise of Lady Jane’s rights over the estates of Bothwell. This appears by the following clause :—‘ Forder, the said

<sup>1</sup> History of the Earldom of Sutherland, p. 169.

‘ Dame Jeane sall retain in hir awin hand and possessioun of the  
‘ leving of the erledome of Sutherland the number of threttie twa  
‘ chalderis victuall to be upliftit be hir and the said Alexander  
‘ during hir lyiftyme, as als the sowme of tuellf hundred merkis  
‘ Scottis money quhilk the said Dame Jeane hes furth of the  
‘ landis of Crichtoun yeirlie according to hir richt of the same,  
‘ togidder with the salt pannis and coill hewches of Sutherland,  
‘ with the haill proffeitis thairof.’<sup>1</sup>

'The Laird of Boyne,' in the words of Sir Robert Gordon, ' did  
' not live many years after that marriage, after whose death she  
' still continued a widow.'<sup>2</sup>

<sup>1</sup> This document is among the papers at Gordonstoun, and was brought under my notice by Captain E. Dunbar-Dunbar of Seapark, who has done much in the illustration of social life in the north of Scotland in former days. Other documents in the same collection show Lady Jane in the exercise of her rights over Bothwell's estate, one of them being a tack by her and the Earl of Sutherland, dated in May 1586, whereby they let to John Arnot, burgess of Edinburgh, and Margaret Craig his spouse, the lands of Wester Crichtoun and Thorniedykes, lying within the sheriffdom of Edinburgh principal, with the toun and lands of Nether Hailes, lying within the sheriffdom of Edinburgh and constabulary of Haddington, which belonged to her in conjunct fee and liferent, and that for all the days of the said Dame Jane's lifetime. Following on this tack are letters of horning at the instance of Sir Robert Gordon, knight, as assignee of Lady Jane Gordon, Countess of Sutherland, his mother, against the representatives of Sir John Arnot for non-payment of 1200 merks of rent due for the lands above mentioned, for the years 1619 and 1620, 'providit to "hir be our umquhile richt trest couisigne James, Erle Bothwell hir husband.' The letters are dated 7th June 1624. For the use of these papers I am indebted to the kindness of Lady Gordon Cumming. (See Appendix of Documents, Nos. v. vi.)

After her third husband's death Lady Jane returned to Sutherland and continued to take an active share in the management of that great territory. Some of her letters written to Sir Robert Gordon, who was tutor to his nephew, John, thirteenth Earl of Sutherland, are preserved at Dunrobin, and exhibit her as the sagacious acute woman of business, looking at things mainly as they would affect the weal of 'our house,' and even with reference to the anticipated nomination of a new bishop to the See of Caithness, expressing only her hope that any 'unfriend of the house' 'might not be appointed.'

She died at Dunrobin in May 1629, when she was in her eighty-fourth year. Her character is thus portrayed by the loving hand of her son :—'A vertuous and comlie lady, judicious, of excellent ' memorie, and of great understanding above the capacitie of her ' sex; in this much to be commended, that during the continuall ' changes and particular factions of the court in the raigne of Quein ' Mary, and in the minoritie of King James the Sixt (which wer ' many), shoe aluise managed her effairs with so great prudence ' and foresight, that the enemies of her familie culd never prevale ' against her, nor move those that wer the cheiff ruellers of the ' state for the tyme to doe anything to hir prejudice, a tyme ' indeid both dangerous and deceatfull. Amidst all these trouble- ' some stormes, and variable courses of fortoun, shoe still injoyed ' the possession of her joynture, which wes assigned unto her out ' of the earledome of Bothwell, and keiped the same untill her death; ' yea although that earledome hath fallen tuyse into the King's

‘ hands by forfaltur in her tyme. Further, shoe hath by her great care and dilligence brought to a prosperous end many hard and difficult busines of great consequence, apperteyning to the house of Southerland.’<sup>1</sup>

In recording his mother’s death, Sir Robert adds some touches to his previous picture. ‘Shoe wes dureing her dayes a great ornament to that familie; shoe wes vertuous, religious, and wyse, evin beyond her sex; and as shoe lived with great credit and reputation, so shoe dyed happelie, and wes (according to her own command) bureid by her sones Sir Robert and Sir Alexander (now onlie alyve of all her children) in the cathedrall church of Dornogh, in the sepulchre of the Earles of Southerland.’<sup>2</sup>

Lady Jane Gordon at the time of her marriage with Bothwell was a member of the Roman Catholic Church, and she continued steadfast in her religion to the end of her days. It is not easy to understand, in a religious point of view, how a strict adherent of the old faith, if left to her own will, could have submitted to the annulling of a marriage which by its canons was indissoluble. But, however this may be explained, it is certain that after that event, and throughout her life, she remained faithful to the Church when adherence to it involved persecution.

In 1587 we find ‘the Erle of Sutherland, with his Ladie and friends, vehementlie suspectit laitle to have had mess, and

<sup>1</sup> History of the Earldom of Sutherland, pp. 168-9.

<sup>2</sup> *Idem*, p. 409.

' to be contemners of the Word and Sacrament.'<sup>1</sup> Ten years later,  
 ' the assemblie hes ordainit the Presbitries of Dundie and  
 ' Arbroth to summond befor them the Countessis of Huntlie,  
 ' Sutherland, Caithnes, to subscryve the Confessioun of Faith  
 ' under the paine of excommunicatioun.'<sup>2</sup>

In 1606 'the noblemen suspected of Papistrie are ordained  
 ' to be confined in the touns following, viz. the Erle of Suther-  
 ' land, his wife, and mother, in Inuerness.'<sup>3</sup>

In September 1607 William Murdoche, *alias* M'Kie, a priest, was tried for his life for the treasonable saying of mass in various houses in the north of Scotland, and among these 'in the Lady Sutherlandis house in Suderland, Dwnrobyn.' He was convicted on his own confession, but his sentence, by the King's order, was restricted to the following punishment, viz. to be taken to the Market Cross of Edinburgh, clad in his mass clothes, and there to stand chained from 10 to 12 o'clock; and thereafter, a fire being kindled at the Cross, his mass clothes to be burned therein, 'with all his uther Popische baggadge  
 ' that war apprehendit with him.'<sup>4</sup>

In 1616 Lady Jane, as Countess of Sutherland, was summoned to appear before the High Commission at Edinburgh for her suspected religion, when her son, Sir Robert, appeared for her, and having procured a short delay, 'he purchased unto

<sup>1</sup> Buke of the Universall Kirk of Scotland, p. 718.

<sup>2</sup> *Idem*, p. 948.      <sup>3</sup> *Idem*, p. 1023.

<sup>4</sup> Pitcairn's Criminal Trials, vol. ii. p. 530.

' her from his Majestie an oversight and tolleration of her religion  
 ' dureing the rest of her dayes; and that from thencefurth shoe  
 ' should be no<sup>t</sup> more troubled for her conscience, provyding that  
 ' shoe wold not harbor nor receipt any Jesuits.'<sup>1</sup>

It appears, however, that Lady Jane's troubles for her religion were continued long after this time, and that when she was an old and feeble woman, drawing towards the end of her days, the sentence of excommunication was passed against her.

Evidence of this is preserved in a deed of obligation dated 19th October 1627, whereby, on the narrative that John, Bishop of Caithness, had granted warrant to Alexander Duff, minister at Golspie, by whom sentence of excommunication had been formerly pronounced, now to absolve the countess from the same on her fulfilment of certain conditions, Sir Robert Gordon became bound 'as

<sup>1</sup> History of the Earldom of Sutherland, pp. 320-1. In a letter from Sir Alexander Gordon of Navidale to his brother, Sir Robert, dated 30th June 1616 (in the Collection at Dunrobin), he writes, 'M'Ky writes that he hes 'gottin ane continowatioun to my lady, our mother, from the Bischopis.' It was probably at this time that the following license (at Dunrobin) was granted by the king :—

' We be the tennour heirof gevis and grantis our licence to Dame Jean  
 ' Gordoun, Countesse of Suthirland, to depairt and pas furth of our burgh of  
 ' Edinburgh and the Cannogait to quhatsumeuir pairtis she plessis, without  
 ' ony pane, cryme, skaith, or dangeir to be incurrit be hir thairthrou in hir  
 ' persone or guidis, notwithstanding of the charge gevin to hir for hir  
 ' remaining within our said burgh and the Cannogait, quhill sho be fred  
 ' be us, anent the quhilk, and pane of horning contenit thairuntill are disch  
 ' . . . be their presentis, subscryuit with oure hand the      day of

JAMES R.'

‘ burdeine taker for the said Dame Jeane Gordoun that scho sall  
 ‘ outerlie forbair and absteine from recepting of priestis and  
 ‘ Jesuiteis, and from heiring of mass in tyme cuming, and that  
 ‘ scho sall admitt on all occasiounes the conservance of ministeris,  
 ‘ resort to the churche to heir sermones, quhensoevir schoe recoveris  
 ‘ strenth of bodie and health to doe the samyn, and als that schoe  
 ‘ sall nather suborne, seduce, nor subvert utheris at no tyme her-  
 ‘ efter. Quhairin if it sal happen hir to failzie and doe in the con-  
 ‘ trair, than and in that cace I bind and obleis me to content and  
 ‘ pay to the said reverend father the soume of ane thousand pundis  
 ‘ monie of this realme of Scotland, as liquidat expenssis modifeit of  
 ‘ my awn consent in caice of failzie as said is, to be bestowit ad pios  
 ‘ usus be the advise of ane synode, but preiudice alwayes to the  
 ‘ said reverend father to caus pronounce the said sentence of excom-  
 ‘ munication of new aganis the said Dame Jeane Gordoun, in caice  
 ‘ schoe failyie in performeing of the premissis or onie of thame.’  
 Signed at Dornoch before witnesses—Mr. John Gray minister at  
 Dornoch, Mr. John Sutherland minister at Rogart, and Mr. Wil-  
 liam Cumyng minister at Lothe.<sup>1</sup>

While she was thus steadfast in the old faith, it will be borne  
 in mind that Bothwell’s violent hatred of it formed no barrier to  
 their union. ‘ Shoe left her sone Sir Robert Gordoun her only  
 ‘ and sole executor of her will and testament, though he wes of a  
 ‘ contrarie opinion with her in religion;’<sup>2</sup> and her tolerant temper

<sup>1</sup> In the Charter Room at Gordonstoun.

<sup>2</sup> History of the Earldom of Sutherland, p. 409. It is possible that Sir

appears in one of her letters at Dunrobin, where, with the view of disarming the fears on the score of religion of a relative, whose child she wished to be sent to her at Dunrobin, she wrote, ‘The ‘ barne is not capabill of that, and quhan he is, he sal be at his ‘ awin comand as resone wald.’ Something of her homely wisdom occurs in the following letter (in the Gordonstoun Collection) addressed to her son, Sir Robert, about one of her servants, whose services she wished to retain. It will be noticed that she was as averse as the housewives of the present time to frequent domestic changes :—

‘ To My LOVING SONNE TUTOR OF SUTHIRLAND.

‘ Loving Sonne, I haue vretin thir feu lynis to schau you  
‘ that Barbara Low is past to vesit hir freindis, and as scho  
‘ tellis me hes bein oft send for be thame. Gif thay var desyr-  
‘ ous of hir, I think hir fathir mycht haue vretin to me, seing  
‘ my houss vas lipnit to hir serveis. It is trowith I lyik hir

Robert Gordon's steady support of his mother's cause may have somewhat impaired his own credit with the ruling powers of the country. At all events he fortified his position a few years after this by a testimonial from the Presbytery of Elgin, by which it is certified ‘that Sir Robert Gordon since his residence amongst us heir in the Presbyterie of Elgin hath bein a main ‘advancer off the true religion, and a great forderer and helpe in what con- ‘cerned this present reformation, and is weill affected to the church and peace ‘off this countrey, and hath yeelded ffull and constant obedience to all publick ‘ordinances off the church.’ The document is dated 23d July 1646. (In the Charter Room at Gordonstoun.)

' serveis ; and honest and faithfull servandis ar hard to be fund.  
' Thairfor I vill ernistlie desyir you to travell vith hir fathir to  
' sie quhat help he vill maik to hir with Adame Smyth, and  
' I am persuadit gif ye be ernist vith him he vill not refuis you.  
' It is mair my veill to haue thame togethir nor to haue sindre  
' servandis in thair place, as I haue pruif afoir. Thairfor I vill  
' desyir to be ernist in this, and put him to ane pointe quhat ve  
' may luik for. This I remit to your awin discretioune, for I  
' essuir you I can haue na vining be oft cheingin of servandis.  
' My lord Cuper com bak frome Chatnes on Thurisday at nycht ;  
' he sau not my Lord of Chatnes. I haue stayit him heir hoping  
' ye suld haue bein hame or nou. The morne he takis jurnay.  
' Your brothir past to Chaitnes on Fryday last. Ve think lang  
' for your returne, quhilk I pray God be and sone, and to veill  
' meting. Or farthir occasioune I rest your loving mothir at  
' pouar,

JANE C. SUTHIRLAND.

' Dunrobin this Mounday,  
' lait the xx of September.'



**THE LAW AND PRACTICE OF SCOTLAND**

**PRIOR TO THE REFORMATION**

**RELATING TO**

**DISPENSATIONS FOR MARRIAGE.**



THE LAW AND PRACTICE OF SCOTLAND PRIOR TO THE REFORMATION RELATING TO DISPENSATIONS FOR MARRIAGE.

THE law of marriage which prevailed in Scotland prior to the Reformation rested on the canon law, the principles of which are expressed in the following Synodal Canon of the Diocese of Aberdeen of the thirteenth century :—<sup>1</sup>

‘Quum matrimonium ab ipso Deo in paradiso noscitur institutum, et quoad originem primum est inter alia sacramenta, ut liberius et canonice de cetero contrahatur, precipimus ut nulli detur fides de matrimonio contrahendo nisi coram sacerdote et tribus vel quatuor viris fidedignis ad hoc specialiter conuocatis.

‘Nullus sacerdos presumat alias personas matrimonialiter conjungere nisi prius terna denunciatione in ecclesia publice et solemniter premissa, secundum formam Concilii Generalis, ita quod qui voluerit et valuerit legitimum impedimentum opponat.

‘Inhibeant etiam sacerdotes sub pena excommunicationis ne quis celet impedimenta matrimonii maliciose et ne quis maliciose matrimonium impediatur. Ipse etiam presbyter nichilominus inuestiget utrum aliquod impedimentum obsistat; cumque apparuerit probabilis conjectura contra copulam contrahendam, contractus

<sup>1</sup> Statut. Eccles. Scotic., vol. i. pp. xiii. clxxxix. Many of the canons regarded as those of provincial councils by Lord Hailes have been shown by Mr. Robertson to have been in reality synodal statutes of the diocese of Aberdeen, in the chartulary of which they are recorded.

‘ interdicatur expresse donec quid fieri debeat super eo manifestis  
 ‘ constiterit documentis. Clandestina quoque matrimonia fieri  
 ‘ prohibemus, inhibentes ne quis sacerdos talibus interesse pre-  
 ‘ sumat, et qui contra hoc fecerit canonice puniatur. Denuncient  
 ‘ etiam presbyteri parochianis suis quod matrimonium prohibitum  
 ‘ est infra quartum gradum consanguitatis vel affinitatis. Ulta  
 ‘ quartum gradum legitime contrahitur. Inter compatres et com-  
 ‘ matres et inter filium et filiam et inter susceptum et susceptam et  
 ‘ filium et filiam suscipientis matrimonium interdicimus. Statuimus  
 ‘ etiam ut capellani parochianos suos publice fornicarios statim  
 ‘ compellant cum fornicariis suis contrahere aut eas simpliciter  
 ‘ abjurare nulla conditione adjecta.’<sup>1</sup>

By the canon just recited it was illegal for persons within the fourth degrees of affinity or consanguinity to intermarry.<sup>2</sup>

The mode of computing these degrees has been described by Mr. Riddell in the following terms:—

‘ By the canon law (different from the civil) the degrees of for-  
 ‘ bidden relationship were computed downwards, but in one line.  
 ‘ A brother and sister were in the first degree—a cousin-german in

<sup>1</sup> Regis. Episc. Aberd., vol. ii. pp. 30, 31. Statut. Eccles. Scot., vol. ii. p. 36.

<sup>2</sup> The forbidden relationship was extended to those spiritual ties created through baptism; so that ‘not only the relatives within the same degrees of the *baptizans* and *baptizatus*, but all the connexions within those degrees created by the relation of godfathers and godmothers, and the children for whom they stood sponsors, to the same extent as if actually parents and child.’ (Liber. Off. S. Andree, the Preface, p. xxi.)

‘ the second—the children of the cousin-german in the third—and  
‘ the grandchildren of the cousin-german in the fourth, when the  
‘ prohibited degrees were legally spent and ceased, without being  
‘ protracted to the fifth degree, that is, to great-grandchildren of  
‘ cousins-german. This is established by our official and consis-  
‘ torial procedure and dispensations, as well as by canonists. The  
‘ point that in the canon law occasioned doubt or contrariety of  
‘ opinion at one time was, whether the parent or *common ancestor*  
‘ was to be *included* and taken into calculation as forming the *first*  
‘ degree of relationship or ‘ *primus gradus*.’ But the negative of  
‘ this came to be properly resolved, and the computation held to  
‘ *begin* only under the *first* description, with brothers and sisters,  
‘ and so on—all being easy and self-evident after that *ascertained*  
‘ *terminus a quo*; and which must, on all hands, be admitted with  
‘ us, as such from the evidence subjoined was indisputably our re-  
‘ ceived practice.’<sup>1</sup>

The result of the canonical prohibitions absolutely carried out in a small country like Scotland would have been intolerable, and accordingly its rigour was, from an early period, mitigated by dispensations from the Holy See.

But even with the relief thus afforded, the practical consequences of the prohibition on the state of society had proved disastrous.

Some of the resulting evils are described in a curious instrument

<sup>1</sup> *Stewartiana*, p. 45 : Edin. 1843. See also a learned note on the subject by Dr. Irving in his Life of Sir David Lindsay in the *Encyclopædia Britannica*.

of the period, recently brought under my notice,<sup>1</sup> which also exhibits in operation some of the measures adopted to repress them.

This document is dated at Edinburgh 6th June 1536, and by it John Chesholme, Chancellor of the Cathedral Church of Dunblane, granted to Patrick Ethingtoun and Margaret Hepburn, both of the diocese of St. Andrews, a dispensation to marry, after proof that they were related to each other within the third and fourth degrees of consanguinity.

In the instrument there is engrossed a commission by Anthonius, cardinal, priest, and penitentiary of his Holiness the Pope, dated at Rome 24th June 1534, empowering the said John Chesholme to grant dispensations to the extent of twenty couples, that is to twenty men and as many women, who might be related within the forbidden degrees of consanguinity or affinity or of spiritual kindred.

The commission was grounded on a representation which had been made by Chesholme to the Pope, to the effect that many persons throughout Scotland, with the hope of healing feuds and confirming friendships, were moved to desire the accomplishment of marriage in cases where the parties were related within the forbidden degrees, and that they by their remoteness from Rome were hindered from applying for the necessary dispensations, whereby the hopes of anticipated peace were frustrated, or the parties were married without any dispensation, to the danger of their own souls

<sup>1</sup> For this and many other like courtesies I am indebted to Mr. Dickson of H.M. General Register House.

and the general scandal, all which evils would be avoided if power of dispensing to Chesholme should be conceded.

The license in his favour was qualified by various stipulations, such as the necessity of transmitting to Rome the names of the persons to whom dispensations should be granted, for the purpose of being there recorded, and it was only to continue in force for five years. The dispensation to Ethingtoun was granted within two years of the date of the commission to Chesholme, and was the nineteenth of the twenty which it empowered him to issue, both documents being remarkable for the formal and guarded terms in which they are expressed.

The state of matters resulting from the canonical fetters on marriage is thus referred to by Mr. Riddell :—

‘The condition, status, and legitimacy of persons at the period  
‘(before the Reformation) were extremely vacillating and liable to  
‘dispute. If a husband happened accidentally to learn, no uncom-  
‘mon event in that profligate and dissolute age, that his consort  
‘had carnal intercourse before marriage with a remote relative  
‘within the fourth degree of consanguinity to himself, which made  
‘her in the same degree of affinity to him, or *vice versa*, that was  
‘a certain handle to void and annul it at any time. A vast range  
‘of relations and connections were included in the forbidden  
‘degrees, even embracing those of godfather and godmother, and  
‘sponsors with their genuine and constructive offspring, while the  
‘upper ranks, in the same way as in Germany and the Continent,  
‘then more exclusively intermarrying, and being connected, the

‘ greatest scope and opportunity were afforded to the exception.  
‘ Of course such a mode of eschewing the nuptial thraldom, when  
‘ parties were discontented, was eagerly adopted, either singly or  
‘ by collusion, giving moreover the most unlimited vent to gossip  
‘ and detraction, falsehood and perjury, which attained a high pre-  
‘ mium since the scandalous but decisive imputation could be sup-  
‘ ported by parole evidence. It might also have been long in  
‘ transpiring and only by mere accident, so that, as I have observed,  
‘ great uncertainty must have prevailed as to the status and con-  
‘ dition of individuals; nay it was strictly impossible to say who  
‘ were legally married or not, which indeed evinces the extreme  
‘ necessity of the equitable and salving plea of *ignorantia*.’<sup>1</sup>

Perhaps the most picturesque description of the operation of the canonical prohibitions is that occurring in a series of contemporary letters which have been printed by Mr. Cosmo Innes from the note-book of a Roman notary.<sup>2</sup>

The first of these was addressed by the governor, Arran, in name of the young Queen Mary, to the Pope in 1553, when he craved for an increase of the legatine powers of the Archbishop of St. Andrews; ‘Uti cum iis qui in tertio consanguinitatis et affini-  
‘ tatis gradu etiam multiplici constituti, quique cognatione spirituali  
‘ sunt affines, dispensari possit.’

In the beginning of 1556 the Queen Dowager, then regent of

<sup>1</sup> Riddell on Peerage and Consistorial Law, vol. i. p. 466.

<sup>2</sup> Liber Officialis S. Andree. Appendix to the Preface, pp. xxxix.-xlvi.  
(Abbotsford Club.)

the kingdom, wrote a letter to his Holiness, in which she set forth  
' Nam cum multa quotidie contrahantur inter consanguineos illicita  
' et in gradibus prohibitis matrimonia, et partim ob locorum  
' maxima interualla et itineris pericula, partim ob inopiam, istuc  
' ad sacrosanctam sedem configere non valeant, hujus beneficii  
' petendi gratia, fit ut multi in eo statu cum maximo ecclesie scan-  
' dalo et animarum suarum periculo, obsordescant.'

On the same day she addressed two letters to the Cardinals Sermonete and Caraffa, imploring their influence in procuring a favourable answer to her request for additional powers to the Archbishop ; and in that to Caraffa she dwells on the many incestuous marriages which are daily contracted between relatives, who from poverty, the length of the journey, and the difficulties attending it from the state of warfare prevalent in Italy, are unable to fly to Rome for obtaining the grace of dispensation.<sup>1</sup>

In a brief written by the Archbishop himself, for procuring an extension of his legatine powers, to Cardinal Sermonete, pro-

<sup>1</sup> In illustration of this subject, Mr. Riddell writes—‘ In a letter I have seen of James V., he complains to the Pope of the obstruction to the necessary intercourse between the countries, ‘ vehementis maris oceani tempestates, ‘ et ventos contrarios, ac viarum longarum discrimina,’ owing to which his Holiness prorogated the legal term of communication. In an original dispensation, likewise in 1529, it is grievously lamented that in consequence of this notable distance, ‘ evenit’ that the men of Moray, totally disappoointed of marriage dispensations, were either forced to angry and reluctant celibacy, or, ‘ proh pudor !’ to general incest with their fair sisterhood, to the ruin of their souls, and, of course, pure and unblemished descent of their families.’ (Peerage and Consistorial Law, vol. i. p. 467, note.)

moter of Scotch affairs, in September 1554, he enumerates many reasons for the amplifying of his functions, and dwells on the evils which he hopes thereby to remedy.

He draws special attention to the great number of those in Scotland related within the forbidden degrees, so that it was almost impossible to find members of good families who could be united without finding themselves within the line, whence it resulted that many were married without any dispensation,<sup>1</sup> or having engaged to procure one, afterwards changed their minds, and either sought for divorce, or put away their wives on the pretext of the want of dispensation. The delays and expense of dispensations from Rome were also alleged to be great grievances, leading to many evils.<sup>2</sup>

<sup>1</sup> The case of Squire Meldrum, who thought it ‘greit vexatioun to tarrie upon dispensatioun,’ and accordingly neither waited for a dispensation nor marriage, but, in the meantime, had a daughter by the young widow in Strathern with whom he fell in love, was no doubt one of common occurrence, and so used by Sir David Lindsay in portraying the manners of his day :—

‘Ilk ane did uther consolatioun,  
Taryand upon dispensatioun.  
Had it cum hame, he had hir bruikit,  
Bot or it come, it was miscuikit.’

(*The Works of Sir David Lyndsay*, vol. ii. pp. 283, 290.)

<sup>2</sup> The full passage in this remarkable document is as follows :—‘Et pre-  
‘ sertim cum permulti illius regni subditi tam propinquis cognationis vinculis  
‘ sibi inuicem sunt connexi ut vix liceat reperiri conjugem pro viro vel muliere  
‘ honeste vel generose familie quin sint aliquo consanguinitatis gradu pro-  
‘ hibito conjuncti et pro majori parte in tertio et quarto ac duplice seu

From the circumstances of Scotch society thus described, it followed that in almost no case could a marriage between a man and woman of the higher ranks take place without a dispensation having been previously obtained, and that, in point of fact, a dispensation came in most cases to form part of a marriage settlement.

We discover, accordingly, in the marriage-contracts of the time, that careful provisions were generally introduced for securing this object, which, while they may be regarded as the most authentic illustrations of the existing law and practice, throw at the same time a strong light on the social condition of the upper classes in Scotland.

Thus in the year 1491, Patrick, Earl of Bothwell, grandfather of Queen Mary's husband, agreed to marry one of the two daugh-

' multiplici tertio ac cognatione spirituali Quo fit ut multi (ut sunt hominum  
 ' ingenia semper in vitium proclivis) nulla dispensatione obtenta matrimonio-  
 ' nium contrahant cum suis consanguineis et forte pollicentur dispensationes  
 ' leuare postea mutatis propositis vel querunt diuocia vel reiiciunt uxores  
 ' preterentes defectum dispensationum et quod non suppetunt sibi facultates  
 ' pro tam arduis dispensationibus a sede apostolica leuandis et interdum com-  
 ' positionibus factis cum nonnullis curialibus frustrantur contrahentes ad  
 ' biennium triennium seu longius. Sic defectu dispensationum in promptu  
 ' in ipso initio contractuum multa committuntur inconuenientia et sequuntur  
 ' diuocia. . . . Quod vero ad spiritualem cognitionem attinet nemo est  
 ' qui non inhorrescit ubi audierit de grandi pecunie summa que pro tali dis-  
 ' pensatione solvenda esset nam hoc nomine deterrentur multi usque adeo ut  
 ' nonnulli illud impedimentum partim contemnant partim omnino indurati  
 ' sumptus hujusmodi vel nolunt vel non possunt sufferri'<sup>1</sup>

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<sup>1</sup> Liber Official. S. Andree, p. 164.

ters of George, Earl of Huntly, and the contract<sup>1</sup> provided ‘ gif  
‘ ther be ony impediments of affinite or consanguinitie funden in  
‘ the meyne tyme quhairthrow the said mairage may not have pro-  
‘ gress eftir the law of haly kirke, the remede thairof be procurit,  
‘ and a dispensation goten in all possible haist be comon expens  
‘ of baith partys.’

In the year 1530, a marriage was arranged between George, Earl of Huntly, and Elizabeth Keith, sister of William, Earl Marischal, which was to be solemnised ‘ als sone as ane dispensa-  
‘ tioun may be gottin of the Papis halynes fra the Court of Rome,  
‘ or quhair cuir the Paip beis, for impediments of consanguinitie  
‘ or vtheris standing betwix the said George and Elizabeth that  
‘ may be stop to thair lauchfull mariage; the quhilk dispensatioun  
‘ the said William, Erll Marschall, and his frends sall causs be  
‘ brocht haime upoun thair expens with dew diligence, quhilk  
‘ beand brocht hame, the said George, Erll of Huntlie, sall redely  
‘ vse the samin dispensatioun, and compleit mariage with the said  
‘ Elizabeth but ony longar delay.’

The contract also provided for another contingency which might emerge *after* the marriage had been completed, ‘ that gif thair  
‘ happynis or occurris ony caus of diuorce or impediment of law

<sup>1</sup> Miscellany of the Spalding Club, vol. iv. p. 136, where the contract is printed from the original at Gordon Castle. It has been previously noticed that from this marriage was derived the relationship which rendered it unlawful for James, Earl of Bothwell, to wed Lady Jane Gordon without a dispensation. The daughter of the Earl of Huntly whom Earl Patrick married, was Margaret. (Miscell. of Ban. Club, vol. iii. p. 276.)

‘ quhy the said George, Erll of Huntlie and Elizabeth Keith may  
‘ nocht lauchfully remane togidder in mariage efter that thai be  
‘ anis maryit be way of deid, als oft as ony fit caus of diuorce or  
‘ impedimentis occurris, the said George, Erll of Huntlie, sall, als  
‘ sone as ony sic impedimentis cumis to his eiris, with all possibill  
‘ diligence send to the Court of Rome for new dispensatiounis, and  
‘ sall obtene and get thame, and bring thame hame to conferme  
‘ the matrimony standand betuix thame, makand the barnis lauch-  
‘ full than gottin or to be gottin betuix thame, and abill to succeid  
‘ to the said George’s heritage, thai beand aris maill; and in the  
‘ meyntyme, efter the getting of knawlege of the said causs of  
‘ diuorce or impediments, quhill the hame cuming of the saidis  
‘ dispensationis, the said George sall move na caus of diuorce to  
‘ part fra the said Elizabeth, bot sall abyde and vse them realy  
‘ and actualy, the said Elizabeth being reddy thairto; and gif it  
‘ happynis thame to be diuorcit and partit be autorite of the kirk  
‘ law, the said George sall bring hame dispensationis sufficient,  
‘ quhairby thai may mary agane; quhilk dispensationis he sall vse  
‘ and contract mariage agane, sua that the said Elizabeth sall be  
‘ his lauchfull wif, and the barnis gottin or to be gottin betuix  
‘ thame lauchfull and abill to succeid to the said Georgis heritage,  
‘ thai being aris male, as said is, providing allway that the said  
‘ Elizabeth be reddy thairto.’ ‘ And gif the said George, Erll of  
‘ Huntlie, beis diuorcit and partit fra the said Elizabeth in thair  
‘ lifytyme, and the said George in his wyt and defalt will not con-  
‘ tract mariage lauchfully agane with her be dispensationis of the

‘ Papis halynes, in that cais the saidis lands to remane with the said  
 ‘ Williame, Erll Marschale, ay and quhill the said George, Erll of  
 ‘ Huntlie, or his aris, pay to thame on ane day twa thousand  
 ‘ marks: Providing allwayis that gif the said diuorce or parting  
 ‘ cumis be occasioun of the said Elizabeth, or be hir pursute,  
 ‘ in that cais the said George, Erll of Huntlie, sall pay na sovnis  
 ‘ bot allanerly the touchir that he resauis.’<sup>1</sup>

In the year 1490 an agreement was completed between William, Thane of Caldor, and Duncan Macintosh, captain of the Clan Cattan, for the marriage of Huchone Allansone with Marion Calder, the daughter of the Thane. It contained the following provision :  
 ‘ And because that the said Huchone and Marione ar tua ferdis of  
 ‘ kyne of consanguinitie, and tua ferdis of affinite, the said Thayne  
 ‘ sall ger bryng hayme ayne dispensacione in all guidlie haist, hym  
 ‘ selff payand the ta halff, and the said Huchone the toder halff,  
 ‘ and the said Huchone is oblist to mak na cause in till na oder  
 ‘ place that may stop or let hym be law to mary the said Marione  
 ‘ lachfully, and gif ony uder impediment be fundyn efterwart, or  
 ‘ giff he makis ony caus to let stop or brek the said marriage, the  
 ‘ said Huchone sall bring hayme that dispensacione one his ayne  
 ‘ cost.’<sup>2</sup>

In the year 1487 Alexander Fraser, the laird of Philorth, agreed to marry Marjory Calder, another daughter of the Thane. The

<sup>1</sup> Miscell. of the Spalding Club, vol. iv. p. 138.

<sup>2</sup> Printed from the original in ‘The Book of the Thanes of Cawdor,’ p. 73 ; Spald. Club.

indenture thereon provides, ‘ Ande becaus the said Alexander  
‘ Frasser is godbrother to the said Marjeory Caldor, and scho gode-  
‘ sister to him, quharfor thai mane haf licence and be dispensit of  
‘ our haly father the Pape, and the said Wilyame, Thane of Caldor,  
‘ sal mak the fyrist cost one the dispensacione, and the said Alex-  
‘ ander Frasser sal recompens and make pament tharof efterwart  
‘ quhen he beys lauchfullie in possessione of his landis of Fil-  
‘ lorth.’<sup>1</sup>

In February 1523 a marriage-contract was entered into between Malcolm, Master of Flemyngh, and Janet Stewart, daughter of Agnes, Countess of Bothwell. It narrated the existence of impediments ‘ quhairthrou thai may nocht compleit the said mariaige at this tyme,’ and the agreement of the Countess to ‘ send to the Court of Rome and get and bring hame uppone hir expensis ane purches and dispensacione opon the saidis impedimentis,’ and on their being received, to complete the marriage.

There was also a provision for any *emerging* impediments, in the following terms: ‘ And gyf ony impedimentis efterwart to be proponit or knawin be the said Malcolme, and opon his behalf, quhairthrou the said mariaige betuex hym and the said Janet may nocht stand in the face of haly kyrk, the said Malcolme sall, opon his expensis, in all possable haist, send and bring hame ane purches and dispensatioune furthe of the Court of Rome for contracting and completing of the said mariaige of new betuex hym

<sup>1</sup> The Book of the Thanes of Cawdor, p. 69.

‘ and the said Janet in face of haly kyrk, as efferis, and incontinent thereffir shall compleit the same.’<sup>1</sup>

In 13th February 1554, Hugh, third Earl of Eglinton, contracted to marry Lady Jane Hammiltoun, daughter of the Duke of Chatelherault. One of the conditions of the contract provided—  
 ‘ And forther geif it happenis in ony tymes heirefter that ony causis  
 ‘ or impedimentis of consanguinitie or affinitie, or utheris quhat-  
 ‘ sumeuer be kend or knawin betwix the saidis Erle of Eglintoun  
 ‘ and the said noble ladie, qubilkis happenis noctt to be dispensis  
 ‘ befoir the contracting of the said marriage, the said Erle upoun  
 ‘ his expensis shall obtene dewlie and bring in thir partis ane new  
 ‘ dispensatioun or dispensatiounis for removing of the said impe-  
 ‘ dimentis als oft as neid beis with ratificatioun of the said matri-  
 ‘ money notwithstanding the saidis impediments; or than shall  
 ‘ divorce the said first matrimoney be occasion thairof, quhilk being  
 ‘ thairthrou diuorciat, the said Erle shall incontinent thairafter caus  
 ‘ use the saidis new dispensationis dewlie, and of new agane con-  
 ‘ tract and solempnizat matrimoney in face of halie kyrk with the  
 ‘ said Ladie Jane.’<sup>2</sup>

In a contract of marriage dated 8th June 1562, between Hugh Earl of Eglinton and Dame Agnes Drummond, it is narrated :—  
 ‘ And howbeit thare be na impedimentis of consanguinite or affi-  
 ‘ nitie knawin presentlie betwix the saidis parteis, bot that thai  
 ‘ may compleit the said band of matrimony lauchfullie as said is ;

<sup>1</sup> *Analecta Scotica*, vol. ii. p. 50.

<sup>2</sup> *Memorials of the Earls of Eglinton*, by Mr. W. Fraser, vol. ii. p. 150.

‘ and giff thair sall happen heireftir ony impedimentis of consanguinitate or affinite in tyme cumming to be knavin betuix the saidis  
 ‘ parteis quhairby thai may noct remane in lauchfull matrimony ;  
 ‘ than and that cace the said Hew Erle forsaid bindis and oblisis  
 ‘ him and his forsaidis, to bring hame fra the Court at Rome sufficient dispensationis contenand confirmatioun, or to obtene the  
 ‘ sammyn at ony handis haueand power thairof to dispens with sic  
 ‘ impedimentis that sall happen to be knavin or proponit vpoun  
 ‘ the said Hew Erle’s expensis.’

The statement that no impediment of consanguinity existed was no doubt made to serve an immediate purpose, for in less than two months after the marriage, viz. on the 19th of August 1562, John, Archbishop of St. Andrews, as legate of the Holy See, granted a dispensation to the parties, which set forth that they ‘ scientes in secundo et tertio, ac tertio et quarto, et duplici quarto affinitatis gradibus se inuicem attingere,’ had nevertheless contracted marriage ‘ per verba de presenti,’ followed by consummation and celebration in face of the Church, thus incurring the sentence of excommunication and committing the crime of incest, so that while these obstacles remained they could not remain in wedlock without the dispensation of the Apostolic See, which followed in common form.<sup>1</sup>

Another series of documents in the Gordon charter-chest afford curious illustrations of the practical results which occasionally followed on such marriage arrangements.

<sup>1</sup> Memorials of the Earls of Eglinton, vol. ii. pp. 185, 190.

Elizabeth Dunbar was widow of Archibald Douglas, Earl of Murray, slain in a skirmish with the royal forces at Arkinholme on the 1st of May 1454.

She had scarcely passed three weeks of widowhood when she resolved to take to herself another husband in the person of George, Master of Huntly, eldest son and heir of the Earl of Huntly.

By an indenture,<sup>1</sup> dated on the 20th of May 1455, between the parties and their friends, it was agreed that the said George 'sall  
' marry and have to wife the said Elizabeth Countes of Murray  
' and nane others indurand her life, and make the dispensation  
' of the authority of our haly fader the Pape be obtained in all  
' gudely haste in the sickerest fourme of all impediments that  
' appears or may appear betwixt them, sua that they may lauch-  
' fully complete the said marriage.'

The provisions of the clause which follows suggest some of the accidents which were wont to occur in the interval between the agreement to marry and the time of its completion, and which are also shadowed out in the letters from the Queen Regent, quoted in a previous page (69).

The indenture thus proceeds :—' And in the meantime he [the said George] sall not constrenzie the said lady to carnal copulation but of her free will ; alsua the said lady's men<sup>2</sup> now being

<sup>1</sup> *Miscell. of the Spald. Club*, vol. iv. p. 128.

<sup>2</sup> Among the 'men' of the Countess of Murray who join with her in the indenture is 'Sir Richard of Holland, Chantour of Murray,' author of 'The

' in Ternway sall be keepers of that house, mony or few as lik  
 ' to the said lady, unto the tyme of the fulfilling of the said mar-  
 ' riage lauchfully, quhilk being done be dispensation, the said  
 ' castell shall be delivrd freely to the said George and his said  
 ' spouse to dispone upon it at their awn willis, and to remove out  
 ' of it when they liks.'

It is probable that they did *not* wait the arrival of the dispensation, as they were divorced from each other within a few years of the date of the indenture ; and in 1459 George, Lord Gordon, is described in a charter in the Register of the Great Seal<sup>1</sup> as husband of the Princess Annabella, daughter of King James I.

After becoming the father of a large family of sons and daughters by this his second wife, George became desirous of another change, and on 24th July 1471 a decree was pronounced divorcing him from the Princess, on the ground that ' dictus Dominus Georgius antiquam contraxit matrimonium cum dicta domina Annabella carnaliter cognovit quamdam Dominam Elizabeth de Dunbar quam duxit in matrimonium et ab eadem postmodum judicio ecclesie legitime deuortiatus et separatus dicte domine Annabella in tertio et quarto gradibus consanguinitatis attingentem, et sic invicem dictus dominus Georgius et dicta Annabella in consumilibus tertio et quarto gradibus affinitatis attingunt ;'<sup>2</sup> that is, ' Howlat,' which, according to Lord Hailes, was dated from Ternaway. Mr. Laing has shown how faithfully he adhered to the fortunes of the family. (Adversaria, Bann. Club, p. 11.)

<sup>1</sup> Reg. Mag. Sigill., Lib. 5, No. 91.

<sup>2</sup> Miscellany of the Spalding Club, vol. iv. p. xxx.

George (now Earl of Huntly) got himself divorced from his second wife on account of his carnal connection with his first wife, because the latter—Elizabeth Dunbar—whom he had also divorced, having been within the forbidden degrees of *consanguinity* to the Princess his second wife, it followed that he himself was related in the same forbidden degree of *affinity* with the latter.

In less than a month after the date of his second divorce, the banns were proclaimed for his marriage with Elizabeth Hay, daughter of William, Earl of Errol.

But although this took place, the character of the Earl had become so well established as a jilt, that the marriage was delayed for some years, probably on account of doubts having arisen as to the legality of the last divorce. On 12th May 1476, a contract was entered into between the Earl of Huntly and Nicholas, Earl of Errol, the brother of the lady, by which the former became bound by his oath on the Bible that ‘I sal never presume til hafe actual  
‘ delen wyt the said Elizabeth, nether be slight nor myght nor any  
‘ other manner, on to the tyme it be sene to the said lord Nichol  
‘ and her other tender friends, that I may hafe the said Elizabeth  
‘ to my wife lauchfully.’<sup>1</sup>

These out of many similar examples may be held to confirm what has already been said, that dispensations had come to be an almost universal element in the arrangements for marriage between members of the upper classes in Scotland, and that it was hardly

<sup>1</sup> Printed by Mr. Riddell from the original in the Errol charter-chest.  
(Tracts, Legal and Historical, p. 85.)

possible to contract a marriage, with any certainty of its validity being maintained, without one.

So indispensable, indeed, was the sanction of a valid dispensation, that parties who had been married in virtue of one, but afterwards discovered that in obtaining it the degrees of relationship had been inadequately set forth, were in many cases divorced, after which, under a second and fuller dispensation, they were able to celebrate a legal and unexceptionable marriage.

For such a state of matters provision was made in the marriage-contract between the Earl of Huntly and Elizabeth Keith already quoted, where it was agreed that if after marriage any cause of divorce should emerge which rendered it unlawful for them to continue in the state of marriage, then so often as these were discovered, fresh dispensations should be obtained from Rome—provision being also made, in case of divorce, ‘be autorite of the Kirk ‘law,’ that sufficient dispensations should be procured whereby they might contract marriage again.

A case analogous to this arose in relation to the marriage of Elizabeth, the heiress of the old stock of the Gordons, who carried the vast estates of the family to Alexander Seton, her husband, in the beginning of the fifteenth century. The parties had been married after getting the usual dispensation, and issue had been born to them. Afterwards ‘it however accidentally transpired that there ‘was a nearer forbidden propinquity between them in the third ‘degree there omitted, which induced them to fear the dispensa-‘tion ‘ex eo fore invalidum,’ and to apply for another, which accord-

‘ ingly followed, dated February 5th, 1428, in the name of Jordan,  
‘ the Grand Papal Penitentiary, whereby he enjoins (under apo-  
‘ stolic authority) Henry, Bishop of St. Andrews, to decern the  
‘ preceding dispensation to be as valid ‘ac si in eadem de distantia  
‘ ‘tertii gradus predicti mentio facta fore.’ Thereafter, as is  
‘ established by the original instrument reciting these facts, dated  
‘ December 15, 1429, the Bishop did conform to such effect, which  
‘ made all things right.’<sup>1</sup>

<sup>1</sup> Stewartiana, p. 29.

**APPENDIX OF DOCUMENTS.**



I.

COPY of an ORIGINAL PAPER in the ARCHIVES of the  
FAMILY of HAMILTON, entitled on the back 'Proces of  
' Divorce twixt Erle Bothwell and his Wife. Feb. 21,  
' 1565 '<sup>1</sup> (referred to at p. 5).

[From the contents, however, it appears only to be a proof taken to show that the Earl and Lady Jane Gordon, his spouse, were within the degrees of consanguinity prohibited by the Canon law.]

The twenty ane day of Februar the zeir of God I M V<sup>o</sup> and sextye fyve zeirs, anent the supputatioun and verificatioun of the degreis of consanguenitie attening in dowbill ferdis of consanguenitie in the quhilkis dispensatioun passit betwixt an noble and mychty Lord James Hepburne Erle Bodwell, Lord Crichtoun, Halis, and Liddisdail, Grete Admirall of the haill realm of Scotland, &c., and an noble and mychtie Ladie Jane Gordoun, sister germane to a noble and mychty Lord George Erle of Huntlie, Lord Gordoun, &c., sic proces was usit as efter followis :

The supputatioun and innumeratioun of the said degreis, &c.

George secund Erle of Huntlie and first of that name beand the stoke.

Margaret Gordoun Countess of Bodwell, dochter to the said Erle of Huntlie. Erle Bodwell hir son, ane.

Erle Bodwell his son that diet in Floudoun, twa.

<sup>1</sup> An Inquiry, Historical and Critical, into the Evidence against Mary Queen of Scots. Appendix No. II. Edin. 1772.

Patrick Erle Bodwell his son quha last decessit in Dumfries, thre.  
James now Erle of Bodwell his son, the ferd.

Alexander the third Erle of Huntlie and bruther to the said  
Margaret Countess of Bodwell, ane.

Thene lord Gordoun her sone, twa.

George the ferd Erle of Huntlie and second of that name his  
son, three.

And Jane Gordoun his dochtir, the ferd.

Item, Elizabeth Gordoun Countess of Marsheall, dochtir to the  
first George Lord and Erle of Huntlie and sister to the  
said Margaret Countess of Bodwell, ane.

Robert Keith, Maister of Mersheal, her son, twa.

Elizabeth Keith, Countess of Huntlie, his dochtir, three.

And Jane Gordoun, hir dochtir, the ferd.

And swa one the fadderis syde attening in ferdis of consan-  
guenietie.

And swa upone her moder syde attening in ferdis of consan-  
guenietie.

Depositiones testium juratorum in praesentia Magistri Alexandri  
Forrest rectoris de Logymontrois prothonotarii secretariique et  
datarii Reverendissimi Domini et Domini Joannis Archiepiscopi  
Sancti Andreae legati, &c., in numeratione graduum retro scriptorum  
apud Edinburgh in cubiculo Domini Commendatarii de Lundoris,  
vicesimo primo die mensis Februarii Anno 1565. Talis fuit ex-  
aminatio.

Imprimis Jacobus Dunbar de Tarbat, testis juratus et examinatus  
deponit innumerationem graduum esse veram prout in retroscripta  
scedula continetur.

Alexander Dunbar de Kilboyak, testis juratus et examinatus  
deponit conformiter priori, qui novit omnes gradus, excepto  
stirpe.

Jacobus Keith de Schelis testis juratus et examinatus deponit conformiter præcedentibus testibus.

Monanus Hogg de Bleredryne testis juratus et examinatus deponit conformiter priori testi in omnibus.

Quas quidem depositiones testium prædictorum ego magister Alexander Forrest rector de Logy Montrose prothonotarius ac datarius prædicti Reverendissimi Domini Joannis Sancti Andreæ archiepiscopi ac legati, mediis suis juramentis, corporaliter recessi, et in his scriptis redegi, testantibus meis signo et subscriptione manualibus, ut moris est in similibus, anno, mense die quibus supra, instante venerabili patre Johanne Domino Commendatario de Lundoris pro parte præfati nobilis Domini Comitis de Bodwell et Alexandro Dunbar de Kilboyak pro parte predictæ Jeannæ Gordon, procuratoribus suis literatorie constitutis.

A FORREST prothonotarius ac datarius præfati Domini Reverendissimi Domini Legati,  
attestor.

## II.

### ACCOUNT of the Sentences of Divorce between the EARL of BOTHWELL and LADY JANE GORDON his Wife.

THE original records were produced at Westminster by the Earl of Murray under the following titles—‘Item, a process of divorce led betwixt the said James, sumtime Erle of Bothville, and Dame Jean Gordon his Spouse, before the Commissaries of Edinburgh, for pretended causis of adultery on the said Erle’s part.’ ‘Item, another process of divorce led befoir Mr. John Manderston, as

' judge delegate under the Archbishop of St. Andrews, allegit  
' Primate and Legate.'<sup>1</sup>

The subsequent history of the documents is unknown, and we should have been ignorant of their details but for an account preserved in a manuscript which was communicated to Principal Robertson by Mr. David Falconer, advocate, and is now reprinted from his work :—<sup>2</sup>

*Account of the sentence of divorce between the Earl of Bothwell and  
Lady Jean Gordon his wife. From a manuscript belonging to  
Mr. David Falconar, advocate. Fol. 455.*

UPOUN the 29 of Apryle 1567, before the Richt Hon. Mr. Robert Maitland, dean of Aberdene, Mr. Edward Henryson, doctor in the laws, two of the senators of the college of justice, Mr. Clement Little, and Mr. Alexander Syme, advocattis, commissers of Eden ; compeered Mr. Henry Kinrosse, procurator for Jean Gourdoune Countes of Bothwell, constitute be her for pursewing of ane proces of divorcement intendit by her contra James Erle Bothwel her husband for adultery, committed be him with Bessie Crawfurde the pursuer's servant for the time ; and sicklyke, for the said Erle, compeared Mr. Edmond Hay, who ester he had persued and craved the pursuer's procurator's oath de calumnia, if he had just caus to persew the said action, and obtened it, denyd the lybell, and the said Mr. Harrie took the morne, the last day of Apryle, to prove the same pro prima. The quhilk day, having produced some witnesses, he took the next day, being the 1 of May, to do farther diligence. Upon the quhilk 1 of May, he produced some moe witnesses, and

<sup>1</sup> Goodall, ii. p. 87.

<sup>2</sup> Robertson's "History of Scotland," Appendix No. xxxi. vol. ii. Lond. 1759.

renounced farther probatioune. After quilk, he desired a term to be assigned to pronounce sentence. To whom the said commissars assigned Setterday next, the 3 of May, to pronounce sentence therein, secundum alligata et probata, quilk accordingly was given that day in favour of the persewar.

At the same time there was another proces intendent be the Erl of Bothwell contra his lady, for to have their marriage declared null, as being contracted against the canons, without a dispensation, he and his lady being within degrees pendand, viz. ferdis a kin, and that wyse for expediting of this proces, there was a commissioun grantit to<sup>1</sup> the Archbishop of St. Androis to cognoce and determine it, and Ro<sup>t</sup>. Bishop of Dunkeld, William Bishop of Dumblane, Mr. Andro Craufurd, chanon in Glasgow and parson of Egelshame, Mr. Alexander Creichtoun, and Mr. George Cook, Chancellor of Dunkeld, and to Mr. Johne Manderstoune, chanon in Dunbar and prebendar of Beltonue, or any ane of them. This commissione is datit 27 Aprile, 1567, was presented to two of the saids commissioners,

<sup>1</sup> Mr. Burton, following Mr. Riddell, states that, on the 27th of April, the Queen issued a special Commission to the Archbishop of St. Andrews and certain other clergy to give judgment in the suit for a divorce. (Hist. vol. iv. p. 221.) There is no trace of any such Commission in the Public Records, and I cannot doubt that the cause was tried under a Commission flowing from the Archbishop himself, who, in virtue of the jurisdiction restored to him by the Queen's letter of 23d December 1566, had ample power to grant it. (Register of the Privy Seal, vol. xxxv. fol. 99.) Goodall refers to the Commission as the act of the Archbishop (vol. i. p. 369); and Buchanan, in speaking of the "judices Papani" who were to try the cause, adds that they were appointed for this purpose by the Archbishop of St. Andrews. (Rer. Scoticar. lib. xxiii. fol. 217a, edit. 1582). Whittaker also has drawn attention to the circumstance, and pointed out that the word "to" in the above Account is a mistake for "by" (Queen Mary Vindicated, vol. iii. p. 327, note.)

viz. Mr. And<sup>r</sup>. Crawfurd, and Mr. Johne Manderstoune, on Setterday 3 May, by Mr. Thomas Hepburne, parson of Auldhamstocks, procurator for the Erle of Bothwell, who accepted the delegatioune, and gave out their citation by precept, directed Decano Christianitatis de Hadingtoun, nec non vicario seu curato eccle. parochiæ de Creichtoun, seu cuicunq. alteri cappellano debite requisitis, for summoning, at the said Erle's instance, both of the lady personally if she could be had, or otherways at the parosche kerk of Creichtoun the time of service, or at her dwelling place before witnesses, primo, secundo, tertio et peremptorie, unico tamen contextu protuplice edicto. And likeways to be witnesses in the said matter, Alex. Bishop of Galloway, who did marry the said Erle and his lady in Halerudhous kirk, in Feb. 1565, Sir John Bannatyne, of Auchnoule justice-clerk, Mr. Robert Creichtoun of Elliok, the Queen's advocate, Mr. David Chalmers, provost of Creichtoun and chancellor of Ross, Michael ——, abbot of Melross, and to compear before the said judges or any one of them in St. Geil's kirk in Ed<sup>r</sup> on Monday the 5 of May, be themselves, or their procurators. Upon the said 5 day, Mr. John Manderstoune, one of the judge's delegat only being present, compeared the same procurators for both the parties that were in the former proces, Mr. Edmund Hay (<sup>1</sup> articulatlie ) and some of the witnesses summond, produced and received for proving the same. The said procurator renounced farder probatioune, and the judge assigned the morne, the 6th of May, ad publicandum producta, nempe depositiones ipsorum testium. The quhilk day, post publicatas depositiones prædictas, Mr. Hen. Kinrosse, procurator for the lady, instanter objecit objectiones juris generaliter, contra producta, insuper renunciavit ulteriori defensioni ; proinde conclusa de consensu procuratorum hinc inde causa, judex prædictus statuit crastinum diem pro ter-

<sup>1</sup> Two words in the parenthesis illegible.

mino, ad pronunciandum suam sententiam definitivam, ex deductis coram eo, in præsenti causa et processu. Conform hereunto, on Wednesday the 7th of May, the said judge gave out his sentence in favors of the Erle, declaring the marriage to be, and to have been null from the beginning, in respect of their contingency in blood, which hindered their lawful marriage without a dispensation obtained of befoir.

## III.

DISPENSATION by JOHN, Archbishop of St. Andrews, Primate of Scotland, Legate of the Holy See, for the Marriage of JAMES, EARL of BOTHWELL, and LADY JANE GORDON, 17th February 1566.

JOANNES miseratione diuina Sancti Andree Archiepiscopus totius regni Scotie Primas legatus natus monasteriique de Pasleto Glasguensis diocesis abbas ac cum potestate Legati a latere sancte sedis apostolice Legatus, Dilectis nostris in Christo nobili et potentissimo domino Jacobo comiti de Bothuill domino Crechtoun, Halis et Liddisdaill magnoque admirallo regni predicti Scotie, nostre diocesis, et Jonete Gordone, sorori germane nobilis et potentissimi domini Georgii comitis de Huntlie domini Gordone, mulieri Morauiensis diocesis, salutem in Domino. Sedis apostolice prouidentia non-nunquam juris rigorem mansuetudine temperat, et quod sacrorum canonum prohibent instituta de gratia benignitatis indulget, prout personarum et temporum qualitate pensata, id in Domino expediri agnoscit. Exhibita siquidem nobis nuper pro parte vestra expositio seu petitio continebat quod vos, certis de causis rationabilibus animos vestros mouentibus, desideratis inuicem matrimonialiter copulari, sed quia in duplice quarto consanguinitatis gradibus inuicem estis attingentes, desiderium vestrum in hac parte adimplere non

potestis, dispensatione apostolica desuper non obtenta. Quare supplicari fecistis nobis humiliter, ratione nostre facultatis et officii legatie apostolice nobis gracie commissi de opportune dispensationis gratia vobis misericorditer prouideri. Nos igitur vestris in hac parte supplicationibus fauorabiliter inclinati vobiscum ut predictur duplicitis quarti consanguinitatis gradibus huiusmodi non obstantibus matrimonium libere contrahere, illudque in facie ecclesie solemnizare, et in eo postmodum licite remanere possitis et valeatis, auctoritate apostolica nobis commissa et qua fungimur in hac parte, tenore presentium misericorditer in domino dispensamus, prolem seu proles exinde suscipiendum seu suscipiendas legitimam seu legitimas fore decernentes per presentes. Datum sub sigillo nostro apud monasterium nostrum de Pasleto anno incarnationis Dominice millesimo quingentesimo sexagesimo quinto xij<sup>o</sup> Kalendas Martii pontificatus sanctissimi domini nostri Pape Pii quarti anno septimo, etc.

JOANNES SANCTIANDREE, Legatus.

S. A. FORREST, datarius.

In dorso. R<sup>ta</sup> li<sup>o</sup> 2<sup>do</sup> fol. 06.

#### IV.

##### CONTRACT of MARRIAGE between JAMES, EARL of BOTHWELL, and LADY JANE GORDON, 12th February 1565.<sup>1</sup>

IN presens of the lordis of counsale comperit maister dauid borthwick procuratour specialie constitut be this contract vnder vritten for ane noble and mychty lord george erle of huntlie, dame agnes Keith countes of huntlie his moder, and Jane gordoun sister germaine to the said erle, george lord seytoun, alex<sup>r</sup> lord home, Dauid lord Drummond, laurence maister Oliphant, as cautioneris and souerties for the saidis principale contractaris, on that ane part, and

<sup>1</sup> Register of Deeds, etc., Gen. Register House, vol. viii, fol. 532.

maister Alex<sup>r</sup> Skene, procuratour Inlykewis specialie constitut, for James erle boithuile, lord haillis, Creichtoun, liddisdaill, and grete admirale of Scotlande, on that vther part, And geif in this contract and appounctument vnder writtin, subscruit with thair handis, and desyrit the samin to be insert and registrat in the buikis of counsale, to haif strentch force and effect of ane act and decret of the lordis thairof in tyme to cum, And letters and executoriellis to be direct thairupoun in maner specifit thairintil, The quhilk desir the saidis lordis thocht ressonable, and thairfoir hes ordanit and ordanis the said contract and appunctuament to be insert and registrat in the buikis of counsale, to haif the strentch force and effect of thair act and decret in tyme to-cum, And hes interponit and interponis thair authoritie thairto, And decernis and ordanis letters and executoriellis to be direct thairupoun In maner specifit thairintill, Of the whilk contract the tennour followis :

At Edinburgh the nynt day of februar The zeir of god J<sup>m</sup>. v<sup>c</sup> Lxv zeris It is appounctit aggreit and finalie contractit betuix the noble potent and mychty lordis and lady vnder writtin That is to say george erle of huntlie lord gordoun &c. Dame Elizabeth keith countes of huntlie his moder, and maistres Jane gordoun sister germane to the said noble erle of huntlie, with aduis and expres counsale of our souerane lady Marie quene of Scotland, And the saidis erle and lady takand the burding vpon thame alsua for the said maistres Jane on that ane part, and ane noble and potent lord James erle boithuile lord haillis creichtoun Liddisdale, and grete admirale of scotland on that vther part, In maner form and effect as efter followis, That is to say the said James erle bothuile shall mary and tak to his spousit wyfe the said Maistres Jane gordoun, and shall solempnizat the band of matrimony with hir in face of haly kyrk be wordis of the present tyme, with solempniteis requirit thairto as effeirs, betuix the dait and day heirof and the first day of Merche nixto-cum heirefter following, And syklike the said James

erle boithuile soll befoir the completing of the said mariage, infect  
the said maistres Jane gordoun in hir pure virginitie, In lyifrent for  
all the dayis of hir lyiftyme, be plane alienatioun and venditioun,  
for sowmes of money tobe mentionat thairintill be charter and pre-  
cept of sasing, in all and haill the toun and manis of Creichtoun  
with the hous tour and fortilice of the samin, pendiculis and perti-  
nentis thairof, And siclyke in the townis and landis of thornedykis,  
lochquohoret, and Wogre, with thair pendiculis, all lyand within the  
lordschip of creichtoun and schiref-dome of Edinburgh, Tobe haldin  
of our soueranis lord and lady, siclyke and als frelie as the said  
James erle boithule or his predecessouris haldis or held the samin  
of their maiesteis and their predecessouris of befoir, conform to the  
auld Infectmentis of the samin alanerie, And siclyke the said James  
erle boithule soll mak constitute and ordane, Lyke as he be thir  
presentis makis constitutis and ordanis the said maistres Jane gor-  
doun his werray lauchful vndoubtit and Irrevocable cessioner and  
assignay in the maist ample and sure form that can be devisit In  
and to the reuersionis erit specifiit for redemptioun of the landis  
aboue expremit, With thair pendiculis and pertinentis, And in and  
to the ryght of redemptioun and outquitting of the saidis landis be  
virtue of the saidis reuersionis, fra the persons following, and vtheris  
pretendit heretable possessouris thairof, quhomto the samin ar  
annalit, To the effect that the said maistres Jane may redeme the  
samin be vertu of the saidis reuersionis and assignationis to be  
maid thairupoun, siclyke and als frelie as the said erle mycht haif  
done befoir the making of thir presentis, That is to say the landis  
of thorne dykis With the pertinentis annalit to James barroun  
burghes of edinburgh<sup>1</sup> vpoun the sown of four thousand fyve hun-  
dreth merkis, The landis of Vo-garie fra the aris of vnuquhile Sir

<sup>1</sup> James Barron was a great Reformer, the friend of Knox, and was the representative of the town of Edinburgh in the first General Assembly. (Queen Mary's Inventories, p. xciii.)

robert Carnegy apprisit for the sowm of tua thousand fyve hundreth merkis, The ane half of the landis of Lochquhorat annaliit to robert craig burges of edinburgh vpoun the sowm of thre hundreth pund, and the vthir half of the samin landis of lochquorat annaliit to James Cowpar burges of the said burgh vpoun the sowm of sex hundreth pundis, And sall warrand the saidis landis to be redemable vpoun the forsaidis sowmes respectiue, and to be fre of all vtheris apprisingis alienatiounis or Wodsettis maid vpoun the saidis landis or ony part thairof of befoir, vtherwis nor is abone expremit, And the said James erle boithule sall caus the saidis reuersionis to be presentit and maid patent for redemptioun of the saidis landis als oft as is necessarlie requirit to that effect, And siclyke the saidis george erle of huntlie, dame Elizabeth Keith, and the said maistres Jane gordoun sall befoir ilk term of payment of the sowmes of money eftir specifiit, caus mak lauchfull warning In the said maistres Janis name as assignay forsaid, With aduis and consent of the said James erle boithule hir spous, to the heretale possessouris of the saidis landis, and vtheris havand enterest thairof, for redemptioun of the saidis landis, or samekle thairof at ilk term of payment as the siluir of the said termes payment will extend to, And that the sowmes of money following salbe rady in nvmerit money at the saidis termes to be deliuerset for redemptioun of the saidis landis, And to deliuer the saidis sowmes to that effect, and mak payment thairof at ilkane of the saidis termes without forther delay, And howsone the saidis landis salhappin to be redemit and quitout as said Is, The said James erle boithule and the said Maistres Jane his spous, redemaris of the saidis landis, with ane consent and assent, sall resigne the samin landis with the place tour fortilice partis pendiculis and pertinentis thairof, and vtheris abone specifiit, In our soueranis handis, for heretale infestment to be gevin agane thairof to the said erle maistres Jane his spous, And the langar levand of thame tua In coniunct feftment, And to the aris

lauchfullie gottin or tobe gottin betwix thame, quhilkis failzeing, to the said erle boithuiles aris and assignayis quhatsumeuir, Tobe haldin of our said soueranis and thair successouris In maner befor rehersit, ffor completing of the quhilk mariage and vtheris caassis aboue rehersit, the said george erle of huntlie sall thankfullie content pay and deliuer to the said James erle boithuile, the sowm of tuelf thousand merkis vsuale money of this realm In maner and at the termes following That is to say the sowm of foure thousand merkis thairof at the day of the dait and subscriuing of this present contract, The sowm of vthir four thousand merkis thairof betwix the dait of the samin contract and the feist of Witsounday ~~nixt~~ thaireftir following in the zeir of god J<sup>m</sup> v<sup>c</sup> Lxvj zeris, And the sowm of ane thousand pundis money forsaid at the feist of Martymes ~~nixt~~ thaireftir in the samin zeir of god J<sup>m</sup> v<sup>c</sup> Lxvj zeris, The sowm of ane thousand pundis money forsaid at the feist of Witsounday ~~nixt~~ thaireftir following In the zeir of god J<sup>m</sup> v<sup>c</sup> Lxvij zeris, Extending the forsaidis haill sowmes comptit togidder to the sowm of xj<sup>m</sup> merkis, And the samin sowmes tobe payit at the termes respective forsaidis Salbe consignit, deliuerit, and put in keiping in the handis of patrik hepburn of Wauchtoun, or In the handis of Sir Symon prestoun of Craigmillar knycht, Tobe Warit and employit vpoun the redemptioun and outquitting of the landis aboue expremit, With the pendiculis and pertinentis thairof, To the effect forsaid And in maner as is befoir rehersit, And als sall content and pay to the said erle boithuile the sowm of ane vther thousand merkis money forsaid, in compleit payment of the forsaid haill sowm of tuelf thousand merkis aboue writtin, quhen and quhatsumeuir tyme the said erle boithuile sall require the said george erle of huntlie and dame Elizabeth Keith his modder for the samin, And for sure payment to be maid to the saidis noble lord and lady of the said sowm of xij<sup>m</sup> merkis to the effect aboue specifit, and that the samin salbe rady at the termes of payment for-

said, To be Warit employit gevin and deliuering for redemptioun of the forsaidis landis termlie as said Is, In maner abone rehersit, The said noble erle sall find, and findis the personis vnder written, That is to say noble lordis george lord seytoun, Laurence maister of olyphant, alex<sup>r</sup> Lord Home, and Dauid lord Home, cautioneris and full dettouris with thame selffis coniunctlie and seueralie, quha salbe actit In the buikis of counsale and sessioun, vnder the panis of horning or poynding, or bayth, as the said James erle boithuile best pleissis, And for observing keiping and fulfilling of the premissis All the saidis partiis and cautioneris forsaidis ar content and consentis that this present contract be actit and registrat In the buikis of counsale and sessioun, and decernit to haif the strenth of ane decret of the lordis thairof, And thair authoritie to be interponit thairto with executoriellis of horning or poynding to be direct heir-upoun at the plesour of the partyis, And bayth the saidis partiis ar content that this present contract be reformat, to the effect the said maistres Jane may be surelie infect In the landis foresaidis, in manner aboue expremit, be the adwis and sycht of men of vnderstanding gif neid beis, And als the said noble and mychty lord george erle of huntlie lord gordoun &c., Dame Elizabeth countes of huntlie and his cautioneris forsaidis, constitutis Maister Dauid borthuik and ilk ane of thame procuratouris To compeir befoir the lordis of sessioun And to consent for thame to the registratioun heirof, And siclyke the said noble and mychty lord James erle boithuile &c. constitutis Maister Alex<sup>r</sup> Skene Alex<sup>r</sup> Mauchame or ony ane of thame procuratouris to compeir for his lordschip and siclyke to consent thairto, And the said noble and mychty lord george erle of huntlie obllisis him his aris executouris and assignayis To relief warrand and keip skaythles the saidis cautioneris and eueryane of thame of all and sindry the premissis and sowmes aboue specifit, In witnes heirof our souerane lady, and the partiis principalis, and the cautioneris forsaidis, hes subscriuitt thir presentis

day zeir and place forsaidis Befoir thir witnessis noble and mychtie lordis Johne erle of Athoill, Wm erle merschell, Alex<sup>r</sup> bischope of galloway, Johne commendator of Lindoris, maister James balfour persoun of flisk, maister Dauid Chalmer chancelar of ros, with vtheris diuers. Sic subscriptitur.

Marie R.

george erle of huntlie

James erle boithuile

Elizabeth countes of huntlie, with my hand led on the pen  
be the lord bischope of galloway

Ita est, Alexr bischop of galloway prothonotarius

Jane Gordoun With my hand

george lord seytoun

alexr lord home

Dauid lord drummond

L Mr oliphant.

## V.

CHARTER under the Great Seal, confirming a CHARTER by JAMES, EARL of BOTHWELL, to LADY JANE GORDON, his Wife, in liferent, of the Lands of Nether Hailes and others, both dated 11th June 1566.<sup>1</sup>

HENRIC[US et Ma]jria Dei gratia Rex et Regina Scotorum, omnibus probis hominibus totius terre sue clericis et laicis salutem, Sciatis nos quandam cartam donationis factam datam et concessam per predilectum nostrum consanguineum Jacobum comitem de Boithuile, dominum Creichtoun, Halis, et Liddisdail, totius regni nostri magnum admirallum, predilecte nostre consanguinee Joanne Gordoun eius sponse, in vitali redditu, pro toto tempore vite sue, totarum

<sup>1</sup> From the original charter at Dunrobin.

et integrarum terrarum et ville de Nethir Halis, cum castro fortalicio domibus pendiculis et pertinentiis earundem, jacentium in dominio de Hailis, infra vicecomitatum nostrum de Edinburgh et constabulariam de Hadingtoun, tenendarum de nobis et successoribus nostris, de mandato nostro visam lectam inspectam et diligenter examinatam, sanam, integrum, non rasam, non cancellatam nec in aliqua sua parte suspectam, ad plenum intellexisse sub hac forma, Omnibus hanc cartam visuris vel audituris, Jacobus comes de Bothuile, dominus Creichtoun, Halis et Liddisdaill, magnus admirallus Scocie, salutem in Domino Sempiternam, Noueritis nos pro singularibus fauore et amore quos erga predilectam nostram coniugem, dominam Joannam Gordoun habemus et geremus, dedisse concessisse et hac presenti carta nostra confirmasse, Neenon dare concedere et hac presenti carta nostra confirmare dicte predilecte mee coniugi, domine Joanne Gordoun, in vitali redditu, pro toto tempore vite sue, Totas et integras terras nostras et villam de Nethir Halis, cum fortalicio castro et edificiis pendiculis et pertinentiis earundem, jacentes in dominio nostro de Halis, infra vicecomitatum de Edinburgh et constabulariam de Hadingtoun, Tenendas et habendas totas et integras prefatas terras et villam de Nethir Halis cum castro fortalicio edificiis pendiculis et pertinentiis earundem, dicte domine Joanne, mee coniugi, in vitali redditu, pro toto tempore vite sue, de S.D.N. rege et regina, et eorum successoribus in libera albafirma, et vitali redditu imperpetuum, Per omnes rectas metas suas antiquas et diuisas, prout jacent in longitudine et latitudine, in dominibus edificiis boscis planis moris marresiis viis semitis aquis stagnis riuulis pratis pascuis et pasturis molendinis multuris et eorum sequelis aucupationibus venationibus punctionibus petariis turbariis carbonibus carbonariis cuniculis cuniculariis columbis columbariis pomis pomerii fabrilibus brasinis brueriis et genestis siluis nemoribus et virgultis tignis lignis lapicidiis lapide et calce, Cum curiis et earum exitibus herezelidis bluidwitis et mulierum

merchetis, cum communi pastura libero introitu et exitu, ac cum omnibus aliis et singulis libertatibus commoditatibus proficuis asiamentiis ac iustis suis pertinentiis ad prefatas terras spectantibus seu iuste spectare valentibus quomodolibet in futurum, libere quiete plenarie integre honorifice bene et in pace sine aliquo impedimento reuocatione contradictione aut obstaculo aliquali. Reddendo inde annuatim dicta domina Joanna mea coniux prefatis S.D.N. regi et regine, et eorum successoribus, durante toto tempore vite sue, vnum denarium visualis monete regni Scotie, in festo Penthecostes, nomine albefirme, si petatur tantum, pro omni alio onere exactione questione demanda seu seruicio seculari que de predictis terris cum pertinentiis cum castris turribus fortaliciis et pertinentiis suprascriptis per quoscunque iuste exigi poterit quomodo-libet vel requiri, Et nos vero dictus Jacobus comes de Boithuill heredes et successores nostri totas et integras prefatas terras et villam de Nethir Halis, cum castro turre fortalicio pendiculis et pertinentiis dicte domine Joanne, durante toto tempore vite sue, in omnibus et per omnia sane pariter et effectu vt premissum est contra omnes mortales warantizabimus acquietabimus et imperpetuum defendemus, In cuius rei testimonium, [huic carte] manu nostra subscripti sigillum nostrum proprium est appensum, apud Hadingtoun, undecimo die mensis Junii Anno Domini millesimo quingentesimo sexagesimo sexto, coram hiis testibus Georgio Broun de Colstoun, Patricio Quhitlaw de eodem, Willelmo Hepburn de Crauch, magistro Georgio Hepburn rectore de Hacht, et magistro Joanne Spens burge de Edinburgh, cum diuersis aliis. Quamquidem cartam, ac donacionem in eadem contentam, in omnibus sui punctis et articulis conditionibus et modis, ac circumstanciis suis quibuscunque, in omnibus et per omnia, forma pariter et effectu, vt premissum est, approbamus ratificamus ac pro nobis et nostris successoribus pro perpetuo confirmamus Saluis nobis et successoribus nostris iuribus et seruiciis nobis et predecessoribus nostris de prenominatis

terris cum castris fortaliciis pendiculis et pertinentiis earundem ante presentem nostram confirmationem debit is et consuetis, Insuper volumus et concedimus ac pro nobis et successoribus nostris pro perpetuo decernimus et ordinamus, quod hec presens confirmatio . . . . omnibus temporibus futuris erit tanti roboris fortitudinis et efficacie dicte nostre predilecte consanguinee domine Joanne durante toto tempore . . . . sub nostro magno sigillo in maiori forma ante sasinam per ipsam de eisdem susceptam data et concessa fuisset, non obstante sasi . . . . iuxta quam dispensamus per presentes imperpetuum In cuius rei testimonium huic presenti carte nostre confirmationis, magnum sig . . . . cepimus Testibus reuerendissimo in Christo patre Joanne archiepiscopo Sanctiandree &c., dilectis nostris consanguineis Georgio comite de Huntlie domino Gordon et Badzenach cancellario nostro, Willelmo comite mariscalli domino Keith, Richardo Maitland de Lethingtoun, equite aurato, nostri secreti sigilli custode, magistro Jacobo Balfour de Pittendreich milite, nostrorum rotulorum registri et consilii clerico, et Joanne Bellenden de Auchnoule milite, nostre iusticiare clerico, apud Edinburgh vndecimo die mensis Junij, Anno Domini millesimo quingentesimo sexagesimo sexto, et regnorum nostrorum annis primo et vicesimoquarto.

## VI.

TACK by LADY JANE GORDON, COUNTESS of SUTHERLAND,  
with consent of ALEXANDER, EARL of SUTHERLAND,  
her Husband, to JOHN ARNOT, Burgess of Edinburgh,  
and his Wife, of the Lands of Wester Crichton and  
others, dated 16th May 1586.<sup>1</sup>

BE it kend to all men be thir present letteris, we dame Jeane

<sup>1</sup> From the original at Gordonstoun.

Countes of Sutherland, and Alexr. erle of Sutherland my spous, for his interes, to haif set and for maill lattin, and be the tennour heirof settis and for maill lattis, to our weilbelouit Johne Arnot burges of Edinburgh and Margaret Craig his spous, thair airis assigneyis and subtennentis, all and haill the towne and landis of Wester Creichtoun and Thorniedyikes, with the pertinentis lyand within the schiresdome of Edinburgh principall, togidder with the towne and landis of Nether Haillis with the pertinentis, lyand within the schiresdome of Edinburgh and constabularie of Hadington, pertaining to me in coniunct fie and lyverent, ffor all the dayes and termes of myne the said Dame Jeanes lyiftyme, thair entrie thairo to be and begin at the feast and terme of Whitsonday nixtocum, the tuentie tua day of Maii, the zeir of God j<sup>m</sup> v<sup>e</sup> fourscoir sex yeiris, and thairefter for the said space to indure, with all and sindrie commodities fredomes aismentis and richteous pertinentis quhatsumeuer, pertaining or that richteouslie may pertene thairo, during the said space, frielie quietlie weill and in peace, but ony revocatioun obstackill impediment or agane calling quhatsumeuer, with powar to the said John and Margaret to input and output the tenentis thairof so oft as they sall think expedient, And that be our consent and speciall adwyis hade and obtenit thairo, payand thairfoir yeirlie to ws during our lyiftyme as said is for the first tua zeiris nixt efter the dait heirof the sowme of ane thowsand merkis vsuall money of this realme, and fra thyne furth, induring the said space, the sowme of tuelf hundreth merkis money forsaid, at tua termes in the zeir Witsonday and Mertimes in wynter, of maill alanerlie, Attour I with adwyis and consent of my said spous, hes maid constitute and ordanit, and be the tennour heirof makis constitutes and ordanes the said John and his airis our werie lauchfull and vndoubit baileis of all and haill our landis aboue writtin with the pertinentis, during the space aboue specifeit, court or courtis

ane or ma vpone the saidis landis to set begin afferme call  
and continew als aft as neid beis, and to creat clerk seriand  
dempster and officeris at thair plesour, suittis to mak be callit,  
absentis to amerciat, transpassouris to punische, vnlawis amerchia-  
mentis and eschaettis of the saidis courtis to thair awin vse and  
commoditie to aply and imbring, and generalie all and sindrie  
vther thingis to do exerce and vse that to the office of bailzearie in  
sic caces of law or consuetude of this realme is knawin to apper-  
tene, or that I and my said spous micht do thairin our selffis and  
we wer personalie present, firme and stabill etc. And I forsuith  
and my said spous shall warrand acquiet and defend to the said  
John and Margaret, thair airis assigneyis and subtennentis forsaidis,  
this present letter of tak and assedatioun, of all and sindrie the  
landis abouewrittin with the pertinentis, togidder with the bailze-  
arie forsaid thairin contenit, in all and be all thingis as is aboue  
expremit, aganes all deidle as law will, but fraud or gyle, In  
witnes of the quhilk thing I and my said spous hes subscryuit  
thir our lettres with our handis, at Dunrobin, the sextene day of  
Maii, the zeir of God j<sup>m</sup> v<sup>e</sup> four scoir sex zeiris, befoir thir witnesses  
Hugh Gordoun of Ballintoun, Adame Gordoun of Golspikirtoun,  
Clement Cor burges of Edinburgh, and Hendrie Fermour our  
seruitour, notar publick. Sic subscriptitur, Alexander erle of Suther-  
land, Jane G. Sutherland, Hew Gordoun witnes, Clement Cor  
witnes, Adame Gordoun witnes, Hendrie Fermour witnes.

## VII.

LETTERS of horning at the instance of Sir Robert Gordon of Kinmownowie, knight, as assignee to the maills of Crichtoun for the years 1619 and 1620, appointed by Lady Jane Gordon, Countess of Sutherland, narrating the foregoing tack by 'deame Jeane Gordoun' Countes of Sutherland, with advyse

' and consent of the Earl of Sutherland, her husband, of all  
' and hail the landes and leiving of Crichtoun, Turnie Dykes,  
' and Haills, provydit to hir be our umquhill Richt Trest cou-  
' signe James Earle Bothwell hir husband, to umquhill Sir  
' Johne Arnot<sup>1</sup> of Bersvic knight, and umquhill Margaret  
' Craig his spouse,' against Marion Arnot, daughter of the said  
Sir John Arnot, sometime spouse of the late James Nisbet, and  
now of Mr. Lewes Stewart, advocate, and Helen Arnot, her sister,  
relict of Isaac Morrisone, and now spouse to Sir George Home of  
Manderstoun, Kt., as heirs-portioners of the said Sir John Arnot,  
for non-payment of the sum of 1200 merks for the years specified.  
Dated 7th June 1624.

<sup>1</sup> From the original at Gordonstoun. A contemporary note in the same Collection states that Sir John Arnot died in 1615 or 1616, and that his two daughters, married respectively to James Nisbet and Sir George Home, were served heirs to him in the 'leiving' of Creichtoun, etc.

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ERRATUM.—Page 18, *note*, for Bishop of Dunkeld *read* Bishop of Dunblane.

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